

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA . Criminal No. 1:10cr485  
 .  
 vs. . Alexandria, Virginia  
 . January 22, 2015  
 JEFFREY ALEXANDER STERLING, . 9:53 a.m.  
 .  
 Defendant. .  
 .  
 . . . . .

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

VOLUME VII

APPEARANCES:

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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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I N D E X

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P R O C E E D I N G S

(Defendant present, Jury out.)

THE CLERK: Criminal Case 10-485, United States of America v. Jeffrey Alexander Sterling. Would counsel please note their appearances for the record.

MR. TRUMP: Good morning, Your Honor. Jim Trump on behalf of the United States.

MR. OLSHAN: Good morning, Your Honor. Eric Olshan on behalf of the United States.

MR. FITZPATRICK: Good morning, Your Honor. Dennis Fitzpatrick on behalf of the United States.

THE COURT: Good morning.

MR. POLLACK: Good morning, Your Honor. Barry Pollack on behalf of Mr. Sterling.

MR. MAC MAHON: Edward MacMahon on behalf of Mr. Sterling, Your Honor.

MS. HAESSLY: Good morning. Mia Haessly on behalf of Mr. Sterling, Your Honor.

THE COURT: Good morning. All right, counsel, have a seat. We're going to hopefully do this very quickly.

The verdict form that was submitted by the government, we've made -- the only change we've made to it is we always want the foreperson's printed signature as well, so that's been changed. Otherwise, that's exactly as it was left with us. There's been no objection, so that's the one we're

1 going to send to the jury.

2 In terms of the final charge, just so you know, we  
3 did make two small typographical corrections since last night.  
4 The instruction for Count 10, where it gives the elements, we  
5 struck out the word "four" to "three," because there are only  
6 three elements; and in the witness protection instruction,  
7 there was a typo. I think "on" was "no." Whatever it was, it  
8 was a one-letter typo, but it makes no change.

9 I looked at the government's request to change the  
10 possession instruction. I'm not going to add the requested  
11 changes. I think that's arguing your case.

12 The job of the instructions is simply to give  
13 definitions of law to the jury but not necessarily to explain  
14 how those definitions apply to the case. In my view, that  
15 would overly help the jury making a decision one way or the  
16 other.

17 So I'm not going to make the changes that the  
18 government requested, and as far as I can tell, other than the  
19 classification markings instruction we just got, there were no  
20 other requests to change anything in the charge. Is that  
21 correct?

22 MR. FITZPATRICK: That's right, Your Honor.

23 THE COURT: All right, that's fine, Mr. Fitzpatrick.

24 Now, the defense filed a series of objections. I  
25 don't think those objections require any changes to the

1 instructions to the extent that both the instruction as to the  
2 witnesses and the exhibits that have -- that we had to handle  
3 specially clearly told the jury not to draw any inferences, and  
4 therefore, the language is already there, and I don't think the  
5 additional language is helpful, so I'm not going to add that.

6 In terms of the description of the counts, including  
7 language about the Eastern District of Virginia, I told the  
8 defense the choice you have is either a brief summary of what's  
9 involved in those counts or the indictment goes to the jury,  
10 and you-all are much happier with the indictment not going in.  
11 Those counts do allege Eastern District of Virginia, and I  
12 think it is therefore appropriate that that be in the overall  
13 very brief summary of those counts, so I'm overruling that  
14 objection.

15 And I didn't think there was any merit to any of the  
16 others, but I'll hear any last-minute discussion of the  
17 instructions.

18 The other thing I just want you to know so there's no  
19 surprises, it's my standard practice when I give them the  
20 direct and circumstantial evidence instruction to give them an  
21 example, and it's usually it snowed in your front yard. You  
22 see a footprint. You can draw an inference that there was  
23 someone in your yard. Most of you have heard me do that one  
24 before.

25 And with possession, I am leaving constructive

1 possession in here because you have Mr. -- the allegation that  
2 Mr. Risen got the possession from the defendant. I give the  
3 jury, my standard example is actual possession, I've got  
4 physical control of this pen. Constructive possession,  
5 Ms. Guyton works for me, and therefore, I can tell her what to  
6 do with her laptop computer, and therefore, I am considered in  
7 the eyes of the law to have constructive possession of that  
8 computer.

9 I'm not going to do joint and single. That we don't  
10 need.

11 And those should be the only two slight ad libs.

12 All right, Mr. MacMahon?

13 MR. MAC MAHON: Yes, Your Honor, good morning. Just  
14 briefly, with respect to the -- can I read from here, Your  
15 Honor?

16 THE COURT: Yeah. I know you're uncomfortable, yeah.

17 MR. MAC MAHON: Judge, with respect to the venue  
18 instruction, I understand the Court's ruling, but I did want to  
19 put in the record -- I assume our objections are going to be  
20 put in the record. Do you want us to file them ECF?

21 THE COURT: You should do them ECF so they're  
22 formally on the record, yes.

23 MR. MAC MAHON: We will do that, Your Honor, and I'll  
24 hand Mr. Trump a copy. We have one for you, Your Honor, but --

25 THE COURT: Oh, my law clerk can get it from you.

1 Ms. Copsey?

2 MR. MAC MAHON: Judge, I'm just handing you a page  
3 from your opinion on the grand jury subpoena of Mr. Risen just  
4 to put in the record here --

5 THE COURT: All right.

6 MR. MAC MAHON: -- as well.

7 What you wrote on page 24 of the opinion, which is  
8 November 30, 2010, is -- and this, this is the substance of the  
9 instruction that we asked for and it was refused -- is that  
10 prosecutions involving disclosure of classified information,  
11 venue is proper both where the information is sent and where it  
12 is received.

13 And you talk about venue --

14 THE COURT: But read the next sentence: "Then you  
15 may be in multiple districts as long as part of the criminal  
16 act took place in that district," and I think that's not  
17 inconsistent with my statement that as long as an act in  
18 furtherance of the crime occurred in the district, there's  
19 venue. So I --

20 MR. MAC MAHON: Well, I understand your ruling, Your  
21 Honor, but I don't -- the defendant objects to the instruction.

22 THE COURT: I understand.

23 MR. MAC MAHON: It doesn't say the disclosure, that  
24 venue is proper where it's sent or received. I'm just making  
25 the record, Your Honor. Thank you.



1 THE COURT: That's fine, Mr. MacMahon. Anything  
2 else?

3 MR. TRUMP: Yes.

4 THE COURT: And, Mr. MacMahon, the other objections  
5 you had as to a definition of "causation" and "classified  
6 information," the Court not only gives the elements of the  
7 offense to a jury in jury instructions, but it's also expected  
8 to give legal definitions of key terms within the elements, and  
9 "national defense information" is a key term that does have to  
10 be explained, and some of the -- as does "willfully,"  
11 "knowingly."

12 I mean, some of these are English language words, but  
13 in any standard charge, you still give the jury some specific  
14 help. So to the extent that we've defined certain terms and  
15 you've objected to that, I'm overruling that objection as well.

16 Now, Mr. Trump?

17 MR. TRUMP: Yes, Your Honor. On the possession  
18 issue, and I don't believe there was any dispute from the  
19 defense this morning, the definition, the fifth paragraph in  
20 that instruction --

21 THE COURT: All right, give me the number of the  
22 instruction.

23 MR. TRUMP: Possession defined.

24 THE COURT: Yeah. You've got page numbers. Just I  
25 can get it faster. On the bottom of your -- go ahead. While

1 you're talking, let me look for it. Go ahead.

2 MR. TRUMP: The way it reads is incorrect in terms of  
3 Counts 1, 4, and 6. It should be in the past tense. In other  
4 words, "In this case, lawful possession of classified  
5 information means possession" --

6 (Knocking on Jury Room door.)

7 THE COURT: Wait, wait, wait, wait, wait.

8 MR. TRUMP: Page 31, Your Honor.

9 THE COURT: Thank you. Go ahead.

10 MR. TRUMP: "For Counts 1, 4, and 6, a person has  
11 lawful possession of something if he is entitled to have it.  
12 In this case, lawful possession of classified information means  
13 possession of classified information by a person who held an  
14 appropriate security clearance at the time the person acquired  
15 the information."

16 THE COURT: Does the defense have any objection to  
17 that?

18 MR. MAC MAHON: No, Your Honor, not to that part of  
19 it. I mean, I've looked at it this morning. The part about  
20 the memories and otherwise, I think, is argumentative, but, you  
21 know, the issue in the case is there's no question Mr. Sterling  
22 had a clearance when he obtained this information and that all  
23 the events that took place thereafter, he didn't, he didn't  
24 have a need to know, so I think that is a clarification that  
25 would be good.

1           The rest of it, I don't think it's necessary.

2           THE COURT: All right, so let me go over that again.  
3 "Possession of classified information by a person who held an  
4 appropriate security clearance" --

5           MR. TRUMP: -- "at the time the person acquired the  
6 classified information."

7           THE COURT: Wait a minute. Do we need "and had a  
8 need to know"?

9           MR. TRUMP: "And had a need to know."

10          THE COURT: "At the time he acquired"?

11          MR. TRUMP: "At the time the person acquired the  
12 classified information."

13          THE COURT: We will add that.

14                I did omit to tell the government, you-all, I am  
15 striking the 404(b) instruction. It's not -- the defense  
16 doesn't want it; the government doesn't need it. It's normally  
17 done to protect the defendant, so I agree with you, I don't  
18 think in this case it helps your case very much, all right?

19          MR. MAC MAHON: The instruction, Your Honor.

20          THE COURT: I'm getting rid of the instruction.  
21 That's what you wanted, and I think that's correct.

22          MR. MAC MAHON: Well, the way it was written, Your  
23 Honor, suggested it was evidence of other crimes.

24          THE COURT: Well, I tried to make it other acts. But  
25 you don't want a 404(b) instruction; is that correct? If you

1 look at the book, if you look at O'Malley, it has acts and it  
2 has crimes.

3 MR. MAC MAHON: Well, there's clearly going to be  
4 argument about these letters and that they're not -- they  
5 aren't part of the indictment, so I think the jury --

6 THE COURT: It's not the letters. It's the --

7 MR. MAC MAHON: It's the phone number, whatever --

8 THE COURT: It's the three documents that the  
9 government maintained were still Secret when they were obtained  
10 from your client's home, correct?

11 MR. MAC MAHON: Yes.

12 THE COURT: All right. Do you want an instruction on  
13 that or not?

14 MR. MAC MAHON: Can I consult with Mr. Pollack, Your  
15 Honor, briefly?

16 THE COURT: All right.

17 MR. MAC MAHON: Your Honor, the instruction goes to  
18 other acts. I think the jury is going to wonder, especially in  
19 the manner in which they saw those, what those documents would  
20 be. The objection I filed last night was as to the -- there's  
21 no, there's no 404(b) pattern type of evidence here that that  
22 evidence would be, so it's hard to craft the instruction, I  
23 understand.

24 THE COURT: Well, all right. That's why I omitted  
25 the, the docket numbers. I could do it now. What I was going

1 to say and what it says now, "The government has introduced  
2 evidence that defendant had classified documents," and I'm  
3 going to do the exhibit numbers. I think it's 141 through --

4 MR. MAC MAHON: There's four of them.

5 THE COURT: 141, -42, -43. It's just those three.

6 MR. MAC MAHON: No, there were four, Your Honor.

7 There was also the, the report he had when he was a trainee.

8 MR. OLSHAN: Your Honor, there was four exhibits,  
9 only three of which were introduced by the silent witness rule.

10 THE COURT: All right. Is that 145 then?

11 MR. OLSHAN: Correct.

12 THE COURT: All right. "In his custody when his  
13 residence was searched." And that's correct, and that evidence  
14 did come in.

15 MR. MAC MAHON: Yes.

16 THE COURT: And I changed the instruction slightly.  
17 "Evidence that an act was done by the defendant at some time is  
18 not, of course, evidence or proof whatever that at another time  
19 the defendant performed a similar act, including the offenses  
20 charged in the indictment."

21 MR. MAC MAHON: Yes. We would request that  
22 instruction.

23 THE COURT: Well, that's what I gave you here.

24 MR. MAC MAHON: Well, I thought there was more to it  
25 that --

1 THE COURT: Well, then it says, "Evidence of a  
2 similar act may not be considered by the jury in determining  
3 whether the defendant actually performed the physical acts."

4 MR. MAC MAHON: Mr. Pollack is asking that it be  
5 "another act," because there isn't a similarity here between  
6 the acts and the way the evidence came in, but I think the jury  
7 does need to be instructed that it's just an act and how it  
8 could be considered, because it was proffered just as evidence  
9 of venue, and they don't need to be told -- I'm sure they'll be  
10 told that in the argument, but --

11 THE COURT: All right, I believe I got the  
12 word "other crimes" out, but I think I still left it in the  
13 last paragraph, but, I mean, the way I modified the standard  
14 404(b) instruction was to get out "evidence of other crimes"  
15 and do it "evidence of other acts," all right? And that's  
16 relevant only to the issue of intent.

17 Yeah.

18 MR. OLSHAN: Would the Court mind just reading the  
19 portion of the instruction that the Court has as to what they  
20 may consider it for?

21 THE COURT: Look at 24.

22 MR. OLSHAN: Page 24.

23 MR. MAC MAHON: Page 24, Your Honor?

24 THE COURT: Page 24 is where I've got it.

25 So the key -- I think the key paragraph, "If the jury

1 should find a reasonable doubt from other evidence in the case  
2 that the defendant did the act or acts alleged in the  
3 particular count under consideration, the jury may then  
4 consider evidence as to an alleged earlier act of a like nature  
5 in determining the state of mind or intent with which the  
6 defendant actually did the act or acts charged in the  
7 particular count."

8 Now, that's verbatim from the standard jury  
9 instruction.

10 MR. MAC MAHON: I think that's a model instruction,  
11 isn't it, Your Honor?

12 THE COURT: It is a model instruction. I took out  
13 the word "crime," so it's been modified, frankly, in your favor  
14 in that respect. And then I have to take the word "crimes" out  
15 of the last paragraph.

16 MR. MAC MAHON: They've already been told he's not on  
17 trial for any other crimes.

18 THE COURT: Correct. And I've got it in the previous  
19 instruction, on 23. So, I mean, it's been told twice.

20 MR. POLLACK: I'm sorry, Your Honor, in the first  
21 paragraph, you're going to say that at another time, the  
22 defendant performed another act, or is it going to say a  
23 similar act?

24 THE COURT: It just says, "The government has  
25 introduced evidence that defendant had classified documents,

1 Exhibits 141 through 145" -- right? I'm going to add that.

2 MR. OLSHAN: 142 through 145.

3 THE COURT: 142 through 145.

4 MR. POLLACK: Yes.

5 THE COURT: ". . . in his custody when his residence  
6 was searched. Evidence that an act was done by the defendant  
7 at some other time is not, of course, any evidence or proof  
8 whatever that at another time, the defendant performed a  
9 similar act, including the offenses charged in the indictment."

10 That's absolutely, I mean, that's absolutely -- other  
11 than I took the word "crimes" out as to the 404(b) evidence,  
12 all right?

13 MR. POLLACK: Yeah. And I understand, Your Honor. I  
14 just -- I would in that last line say "performed another act"  
15 rather than "a similar act."

16 THE COURT: I'm not going to do that. I think I'm  
17 sticking with the language. I've changed enough of it.

18 MR. MAC MAHON: Your Honor, can I talk to Mr. Trump  
19 for one second about this instruction?

20 THE COURT: Go ahead.

21 MR. MAC MAHON: Your Honor, with respect to the  
22 possession defined instruction?

23 THE COURT: Yes.

24 MR. MAC MAHON: In the government's revised draft on  
25 the new paragraph 6?



1 THE COURT: Go ahead.

2 MR. MAC MAHON: It says, "unauthorized possession of  
3 classified information means possession of classified  
4 information," and what was handed to me is a, is a statement,  
5 namely, a letter related to Classified Program No. --

6 THE COURT: I don't have that. I did not agree to  
7 put that request in this instruction.

8 MR. MAC MAHON: Okay. That's fine, Your Honor.

9 THE COURT: Okay?

10 MR. MAC MAHON: I didn't know that that had been -- I  
11 think it may help the jury. So it can't be -- but that's fine;  
12 I accept that.

13 THE COURT: Do you want --

14 MR. MAC MAHON: I mean, I would think that rather  
15 than thinking that it was all the classified information that  
16 may have been in his head or other things, that we're limited  
17 to the letter about Classified Program No. 1, which is the  
18 chart.

19 THE COURT: If you -- if both sides want that, I'll  
20 be glad to enter it.

21 MR. TRUMP: For those counts, 2, 5, and 7, it's taken  
22 directly from the indictment, namely, a letter related to  
23 Classified Program No. 1.

24 MR. MAC MAHON: And I think that would eliminate the  
25 potential for confusion of the jury as they try to decide what

1 exact classified information.

2 THE COURT: All right, tell me which line in that you  
3 want it. "In this case, unauthorized possession of classified  
4 information means possession of classified information by a  
5 person."

6 MR. MAC MAHON: After "classified information" is  
7 comma, "namely, a letter related to Classified Program No. 1."

8 THE COURT: All right, I will add that.

9 MR. POLLACK: Your Honor, Mr. Trump said that applies  
10 to Counts 2, 5, and 7. I think it also applies to Count 3.

11 THE COURT: Well, we're not talking about Count 3  
12 here.

13 MR. POLLACK: I understand, but I think the same  
14 should be on the Count 3 instruction. The national defense  
15 information we're talking about in Count 3 is the letter.

16 THE COURT: All right, does the government agree with  
17 that? What we could do is on page 41, where we're giving the  
18 elements of Count 3, and the first element, "that on or about  
19 the date set forth in the indictment" -- I thought we had put  
20 the date in there because I want to help the jury not have to  
21 search for those things -- "the defendant had unauthorized  
22 possession or control over a document relating to the national  
23 defense, specifically, a letter."

24 MR. POLLACK: Yeah, it looks like you already have  
25 it, Your Honor, I'm sorry, on page 39.

1 MR. MAC MAHON: I'm sorry to be double-teaming you,  
2 Your Honor. We're all trying to get this done. But on page  
3 39, the nature of the offense on Count 3, says "namely, a  
4 letter relating to Classified" --

5 THE COURT: So it's there. And the date --

6 MR. MAC MAHON: It's there, but it's not described as  
7 an element of the offense.

8 THE COURT: Well, it's not really an element. It's  
9 not an element. That's the, that's the item that fulfills that  
10 element.

11 MR. MAC MAHON: Thank you, Your Honor.

12 THE COURT: So all right, it's there.

13 All right, is there anything else? Because we want  
14 to get the jury --

15 MR. TRUMP: Yes, yes, Your Honor. The modification  
16 to your 404(b) evidence does not take into account the other  
17 permissible uses of 404(b). We did not offer it for proof of  
18 intent. We offered it for proof of opportunity, intent,  
19 preparation, plan, and knowledge. All of those should be in  
20 the instruction.

21 THE COURT: What book are you looking at? Because  
22 the one I took it --

23 MR. TRUMP: I'm looking at the rule, Your Honor.

24 THE COURT: I'm sorry?

25 MR. TRUMP: I'm looking at the rule, Rule 404(b). I

1 mean, typically, 404(b) in many cases is offered for intent,  
2 but that is not the purpose here.

3 THE COURT: I'm using the standard jury instruction,  
4 which is not a misstatement of the law. And you can argue.  
5 You can argue. I've ruled on that.

6 All right, anything else, Mr. Trump?

7 MR. TRUMP: No, Your Honor.

8 THE COURT: No? All right, are you all ready then  
9 for the opening? Now, how do you want to split up your time?  
10 45-15? 50-10?

11 MR. OLSHAN: Hopefully, closer to 50-10.

12 THE COURT: 50-10, all right. Everybody is ready.  
13 We're going to try to go without a break, so that again, the  
14 plan is after they've gotten closing arguments, we're breaking  
15 for lunch. Then I'm going to instruct them, all right?

16 All right, let's bring the jury in.

17 (Jury present.)

18 THE COURT: Good morning, ladies and gentlemen.  
19 Thank you. Please have a seat. And again, you've been on  
20 time. We had a few matters we had to take care of.

21 I do want to ask you, did any of you look at *The*  
22 *Washington Post* this morning before coming to court? No?  
23 Either online or in the paper?

24 (No response.)

25 THE COURT: All right, because there was an article

1 about the case. Again, you must be very careful to avoid any  
2 exposure to anything about this case and avoid any kind of  
3 outside-of-the-courtroom contact.

4 We're going to now go into closing arguments. As I  
5 told you yesterday, we're going to hear first from the  
6 government their closing argument, then the defense closing  
7 argument, and because the burden of proof is on the government,  
8 they'll get to do a brief rebuttal, and then you will have your  
9 lunch break.

10 Obviously, that's going to be about two hours. If  
11 any of you do need a break, you know, I'll be looking at you.  
12 Just make a signal and we'll have to take a break.

13 We'll have the regular one-hour lunch break, but it's  
14 earlier today, and then after lunch, you'll get the  
15 instructions from the Court, and then you'll have the case to  
16 deliberate.

17 Who's going to open for the government?

18 MR. OLSHAN: I am, Your Honor.

19 THE COURT: All right, Mr. Olshan, it's lovely to see  
20 the sunshine, but if it's too bright, if it's bothering you, we  
21 can close the blinds.

22 MR. OLSHAN: I think the sunshine is good, Your  
23 Honor.

24 THE COURT: All right, that's fine.  
25

## 1 CLOSING ARGUMENT

2 BY MR. OLSHAN:

3 One of the most important priorities of the United  
4 States government is to do everything it possibly can to  
5 prevent a foreign enemy from obtaining a nuclear weapon.  
6 Keeping nuclear weapons out of the hands of countries like Iran  
7 protects the United States, and it protects the American  
8 public. Make no mistake; we don't have that many options. The  
9 classified program at issue in this case was one of those  
10 options.

11 When the CIA developed Classified Program No. 1, they  
12 vetted it, they approved it, they put time and resources into  
13 it so that this country had an option, an option to disrupt the  
14 nuclear weapons capabilities of Iran. It was one of the only  
15 levers that we believed that we had to try to disrupt the  
16 Iranian nuclear weapons program.

17 Those were the words of former National Security  
18 Advisor and Secretary of State Condoleezza Rice. She was one  
19 of a parade of witnesses who came into this courtroom and sat  
20 in that witness box and told you how important, how vitally  
21 important this classified program was. Not just that we would  
22 develop a classified program that could help undermine the  
23 Iranian nuclear program, but the fact that that program was a  
24 secret.

25 Without question, the operation at the heart of this

1 case was one of the CIA's and the United States' most sensitive  
2 and closely held programs. Public disclosure of that program  
3 and Merlin, the human asset at the heart of it, risked grave  
4 harm not only to Mr. Merlin and his family but also to the  
5 United States and its ability to keep programs like this one a  
6 secret.

7           So why are we here talking about it in a courtroom?  
8 Because of that man, the defendant, Jeffrey Sterling, someone  
9 who violated the oath he swore on the first day he became an  
10 employee of the CIA in 1993, an oath to safeguard the CIA's  
11 secrets not just while he was employed at the CIA but forever.  
12 That was his oath, and he broke it.

13           In 2002, on his last day as an employee at the CIA,  
14 what did he do? He refused to sign that last form saying he  
15 understood his obligations and he would abide by them. The  
16 same promise that he made on his way into the agency, the  
17 defendant refused to make on the way out.

18           You see, the defendant's career was in shambles by  
19 that point, and he blamed the CIA. He felt he'd been  
20 mistreated by the agency, he was angry, and he was bitter, and  
21 so he was done keeping the CIA's secrets.

22           Four years later, many of the secrets that had been  
23 entrusted to the defendant during his time at the CIA came  
24 spilling out of chapter 9 of James Risen's book, *State of War*.  
25 Risen and Sterling had developed a relationship during

1 Sterling's discrimination lawsuit, and Risen was a natural  
2 conduit for Mr. Sterling's story, and so out came the details  
3 of Sterling's work on a classified program and with a  
4 classified human asset, that's Merlin, the defendant knew very  
5 well. That's why you're here, ladies and gentlemen.

6 Over the course of this trial, you've heard testimony  
7 and seen documents that establish a simple truth: Jeffrey  
8 Sterling, a disgruntled former CIA employee with an axe to  
9 grind, disclosed the CIA's secrets to Risen, a reporter he knew  
10 well.

11 But let's step back. This case comes down to three  
12 basic questions:

13 1: Who knew all of the information about Classified  
14 Program No. 1 that shows up in chapter 9 of *State of War*?

15 Question 2: Who had a motive to disclose that  
16 information?

17 Question 3: Who had a relationship with James Risen?

18 The evidence in this case has proven beyond a  
19 reasonable doubt that the single answer to all three of those  
20 questions is just one person: the defendant, Jeffrey Sterling.  
21 Not only did the defendant know all of the relevant facts about  
22 Classified Program No. 1 that showed up in Risen's book; he was  
23 an eyewitness to many of them.

24 More importantly, Mr. Sterling, unlike anyone else  
25 who knew anything about this operation at any point, was the



1 only person who had a reason to tell Mr. Risen what he knew  
2 about it. By the time Mr. Risen picked up the phone to call  
3 Bill Harlow at the CIA in April of 2003 with Mr. Risen's story  
4 about this botched Iranian nuclear operation, Mr. Sterling had  
5 run out of options. He'd lost his EEO complaint, and his civil  
6 lawsuit was going nowhere. The agency had rejected not one,  
7 not two, but five settlement offers from Mr. Sterling and his  
8 lawyers.

9 The defendant was unemployed, he was angry, and he  
10 was bitter. He wanted to lash out. There's your motive.

11 And finally, he knew how to lash out. He already had  
12 a documented relationship with Risen. Just five weeks after  
13 Mr. Sterling refused to sign that final nondisclosure  
14 agreement, Mr. Risen published a story about the defendant in  
15 *The New York Times*. So the next year, in 2003, Mr. Sterling  
16 knew who would listen to him. Three questions, one common  
17 answer: Jeffrey Sterling.

18 Let's take each question one at a time. Question 1:  
19 Who knew all the information in chapter 9? When you go back to  
20 the jury room, you're going to get a couple binders filled with  
21 all of the exhibits in this case. Before you take a look at  
22 any of those nondisclosure agreements or any of the cables we  
23 looked at for a number of days or any of those settlement  
24 offers that were rejected by the CIA, pull out Exhibit 132.  
25 That's chapter 9.

1           As you go through chapter 9, remember one thing: All  
2 that matters for purposes of this case and your job as jurors  
3 is information in that chapter about Classified Program No. 1  
4 and Merlin. Everything else in that chapter you can ignore.  
5 Cross it out. It's irrelevant.

6           The publication of that chapter exposed to the world,  
7 friends and enemies alike, the details of Classified Program  
8 No. 1, so let's start with it. As you read it, you'll notice  
9 that much of the chapter has nothing to do with Classified  
10 Program No. 1 or Merlin. All that's left when you take that  
11 out is what matters.

12           Ladies and gentlemen, at its core, chapter 9 contains  
13 accurate classified details about Classified Program No. 1 and  
14 Merlin. Let's start with what Risen gets right: The core true  
15 corroborated facts. I'll highlight a few.

16           The book accurately describes that Classified Program  
17 No. 1 was designed to stunt the development of Tehran's nuclear  
18 program by sending Iran's nuclear experts down the wrong  
19 technical path, wasting years trying to make a flawed nuclear  
20 design work instead of focusing on their existing nuclear  
21 program. That's the basic overview of the program, and it's  
22 true.

23           More specifically, the chapter details the nature of  
24 the flawed plans, identifying the specific nuclear component as  
25 a TBA 480 high-voltage block or firing set for a

1 Russian-designed nuclear weapon. That specific detail, that's  
2 true.

3 The book also accurately sources the original Russian  
4 intelligence to a Russian scientist who's working with the CIA.  
5 You've seen him referred to in cables as Human Asset No. 2.  
6 The book notes that the intelligence from Human Asset No. 2 was  
7 sent to a National Laboratory and scrutinized by a team of  
8 scientists. All of that is true. The same team was asked to  
9 implant flaws deliberately into those Russian -- into that  
10 Russian design, and those flaws were supposed to be so clever  
11 and well hidden that no one would be able to detect their  
12 presence.

13 Again, it's in the book, and it's true. Walt C.  
14 testified about exactly how the National Laboratory went about  
15 taking that intelligence from Human Asset No. 2, creating that  
16 working fire set, deconstructing it to add in those embedded  
17 flaws, and testing it with a Red Team. That's true.

18 Now, in addition to specific technical details of the  
19 operation, chapter 9 also contains several facts about Merlin,  
20 also known as Human Asset No. 1. For example, the book  
21 accurately reflects that Merlin was a Russian scientist who had  
22 worked at Arzamas-16 in the former Soviet Union and who had  
23 endured long debriefings in which CIA experts and scientists  
24 from the National Laboratories tried to drain him of everything  
25 he knew about the status of Russia's nuclear weapons program.

1           Those details about Merlin are true. And when he  
2 testified, he told you that the description of him in the book  
3 was enough for the Russians to figure out who he was and the  
4 fact that he was working with the United States government.

5           As for Merlin's role in Classified Program No. 1, the  
6 book once again gets many things right. For example, as part  
7 of the operation, Merlin's job was to pose as an unemployed and  
8 greedy scientist who would serve as a go-between for the other  
9 Russian scientist, the one with the greater technical know-how.  
10 That's true.

11           In order to develop viable Iranian contacts, the CIA  
12 instructed Merlin to send e-mails to Iranian scientists and  
13 scholars and to attend scientific conferences. That's true.  
14 Those were his instructions.

15           Ultimately, Merlin communicated with an Iranian  
16 professor, and later, when the CIA learned that another  
17 Iranian, this one a top official, was headed to the  
18 International Atomic Energy Association, or IAEA, in Vienna,  
19 the decision was made to send Merlin over with the fire set  
20 plans. All true and all in the book.

21           So Merlin traveled at the CIA's direction to Vienna  
22 in February of 2000 to make the delivery. During his trip,  
23 Merlin saw a postman while he was trying to figure out how to  
24 deliver the plans. Ultimately, he found the mission and  
25 delivered them.

1 Ladies and gentlemen, these facts are true, and  
2 they're all in chapter 9. There's also no dispute that all of  
3 the facts that I've just recited to you were facts known to the  
4 defendant, but that's not all.

5 The chapter also contains a number of additional  
6 details that point to Mr. Sterling specifically as the source  
7 for Risen. First, as you read chapter 9, pay attention to who  
8 gets the most favorable treatment of all the people who are  
9 referenced in that chapter. It's not Merlin. No, Merlin's  
10 portrayed as being a handling problem, a bumbler, somebody  
11 who's out for money.

12 And it's not Robert S. No, he was more concerned  
13 about pushing ahead than listening to the concerns raised by  
14 the case officer or Merlin as portrayed in the book.

15 And it's certainly not the CIA managers, who somehow  
16 deem this mission a success despite those risks portrayed in  
17 the book.

18 No, the only person who comes out smelling like roses  
19 in Mr. Risen's telling is Mr. Sterling, the case officer. Who  
20 was the case officer during the operation? Jeffrey Sterling.  
21 The book even mentions the fact that the case officer took his  
22 concerns to the Senate. You know that's also true. The way  
23 Mr. Risen writes it, the defendant, the case officer, is the  
24 hero of chapter 9.

25 You should also pay attention to the two most

1 detailed events related to Classified Program No. 1 that show  
2 up in the book. Both took place during the defendant's time as  
3 Merlin's case officer: the meeting in San Francisco and the  
4 trip to Vienna. Those events bookended the defendant's time as  
5 Merlin's case officer: trip to San Francisco, trip to Vienna.  
6 No other case officer had greater knowledge of those events  
7 than the defendant.

8 First the San Francisco meeting. Chapter 9  
9 accurately reflects that Merlin was first shown the fire set  
10 design in a hotel room during the trip. It also mentions that  
11 the case officer, that's Sterling, and the senior CIA officer,  
12 that's Robert S., had a private conversation after Merlin  
13 raised initial concerns about the completeness of the plans.

14 That private meeting is reflected in no cable  
15 traffic. You have the cables. You won't see any single  
16 reference to that private conversation between Robert S. and  
17 the defendant.

18 And what about the trip to Sonoma? You remember  
19 that. That happened. You heard it from Mr. S. He told you  
20 about the kinds of wines he liked.

21 The only people who went on the trip were Mr. and  
22 Mrs. Merlin, the defendant, and Robert S. Once again, no  
23 mention of Sonoma in any cable traffic.

24 What about the other bookend to Sterling's time as  
25 Merlin's handler, the Vienna trip? Much of chapter 9 deals

1 with Merlin's attempt to deliver the flawed plans to the  
2 Iranian mission, to the IAEA. Once again, the book contains a  
3 true detail that appears in no official CIA document and would  
4 have been known only to Merlin and the people who debriefed him  
5 when he got back, Sterling and Robert S. That detail was the  
6 postman Merlin saw when he was attempting to deliver the plans.

7           Next we have the letter. In chapter 9, Risen  
8 reproduces verbatim the letter Merlin purportedly gave to the  
9 Iranians when he delivered the plans. This is the letter that  
10 laid out for the Iranians what Merlin was giving them and the  
11 fact that Merlin expected to be paid if they wanted any more.

12           With one minor exception, the version of the letter  
13 that appears in the book is an exact duplicate of the last  
14 version of the letter to appear in any CIA cable. You have a  
15 draft letter. It's embedded in the cable that's at Government  
16 Exhibit 35. That was a cable drafted by the defendant on  
17 January 12, 2000.

18           Two days later, you have edits coming back from  
19 headquarters from Robert S. He recommends changing the letter  
20 to reflect that it's clear to the Iranians that this initial  
21 package is for free. That's in Government's Exhibit 36.

22           What appears in the book is the draft letter from  
23 Exhibit 35 with the changes made that show up in Exhibit 36.  
24 The evidence at this trial established that the people who  
25 worked most closely on back-and-forth edits to those letters

1 over a period of months were Mr. Sterling and Merlin.

2 And during, during Merlin's testimony, when  
3 Mr. MacMahon asked him about the last version of the letter,  
4 what did Merlin say? He said a couple weeks before he left for  
5 Vienna, he took the last version and he gave it to Jeff, the  
6 defendant.

7 Finally, take a look at page 197 when you go back in  
8 the jury room of chapter 9. At the very top, in paragraph 20,  
9 there is a reference to a secret CIA report that referred to  
10 Merlin as a known handling problem due to his demanding and  
11 overbearing nature, and according to the book, he was a  
12 sensitive asset who had been used in a "high-priority  
13 operation."

14 Again, that's true, but what's even more interesting  
15 about this language is the source of it. This language appears  
16 verbatim in the defendant's performance assessment report, or  
17 PAR, from 2000, the same exact language.

18 And you know the defendant was given a copy of his  
19 PAR with that quoted language in the course of his EEO  
20 litigation, but keep one other thing in mind: Nothing in the  
21 performance evaluation connects that quoted language to a  
22 specific classified program or specific asset. It's vague.

23 The only way James Risen knew to take that language  
24 and connect it to this operation and this asset was if someone  
25 told him that that language connected to the asset in the



1 program.

2 Bottom line, not only does chapter 9 contain a number  
3 of core facts related to Classified Program No. 1 and Merlin;  
4 all of them were known to the defendant. That's question 1.

5 What about question 2? Who had motive? Who had any  
6 motive to disclose any information about Merlin and Classified  
7 Program No. 1? This is an easy question, ladies and gentlemen.  
8 The only person who had any reason to do this was the  
9 defendant. There is absolutely no, zero evidence that anyone  
10 else had any motive to disclose these facts about this  
11 operation and Merlin. Just the defendant.

12 How do you know? Look at the particular spin that  
13 Mr. Risen puts on the operation in the book. He took those  
14 core true facts and he spun them in a particular way. That's  
15 the claim that this was somehow a botched operation that risked  
16 handing over the keys to the nuclear kingdom to Iran.

17 Who had reason to spin a story in a way that made the  
18 CIA look hapless and reckless? It's not Mr. Merlin or Robert  
19 S. They both testified they thought the operation was  
20 brilliant. No.

21 Who had a reason not only to out the program but to  
22 do it in a way that would inflict maximum damage to the CIA?  
23 Jeffrey Sterling. Jeffrey Sterling's spin is what appears in  
24 the book. It's the exact story he told Don Stone and Vicki  
25 Divoll when he went to the Senate Intelligence Committee on

1 March 5, 2003, less than a month after the CIA had rejected his  
2 fifth settlement offer.

3 The only other time anyone expressed the concerns  
4 that Risen parroted in his book was when Mr. Sterling went to  
5 the Senate. That meeting took place over three years, three  
6 years since the trip to Vienna, when Merlin handed over the  
7 plans.

8 Take a look at the cables. At no point leading up to  
9 the trip, over a year, from December of 1998 to when the trip  
10 occurred in February of 2000, at no point during that time did  
11 the defendant raise a single concern about this operation, not  
12 a word to Robert S., not a word to his chain of command in New  
13 York -- that's Mark L., Tom H., Charles Seidel, David Cohen --  
14 not a word.

15 This is very serious stuff we're talking about,  
16 ladies and gentlemen. This is nuclear weapons technology. If  
17 the case officer who was assigned to oversee this operation had  
18 concerns, why wouldn't he raise them before these plans made  
19 their way overseas? He'd be crazy not to.

20 The defendant didn't speak up because he didn't have  
21 any concerns. Not a word when he went to the CIA Inspector  
22 General to complain about discrimination in December 1999.  
23 That was before the operation occurred into 2000.

24 And when Sterling went to the House Intelligence  
25 Committee, you'll remember that's HPSCI, in August of 2000,

1 again, not a single word about a botched operation. Michael  
2 Sheehy testified that a program -- that this program was  
3 extremely sensitive. He was reluctant to talk about it in  
4 court this week, 15 years later. Not a word to Mr. Sheehy.

5 No, Sterling didn't raise any concerns until March  
6 2003, almost five years, five years since the first meeting in  
7 San Francisco where Merlin was shown the plans.

8 What happened between August 2000, when he went to  
9 the House, and March 2003, when the defendant went to the  
10 Senate? About three years of bitter litigation involving  
11 Sterling and the CIA.

12 First there was the EEO process. It took more than a  
13 year. Sterling lost. Then the civil litigation, not one but  
14 ultimately two lawsuits. You have the exhibits. The defendant  
15 lost. And all the while, the CIA rejected every one of the  
16 defendant's settlement offers. The CIA wasn't giving in.

17 During that time in August 2000, Sterling told Eileen  
18 Swicker, she's the chief of staff to the Deputy Director of  
19 Operations, that he would, quote, pursue his claims as long and  
20 as loud as possible, inside and outside the agency.

21 Later in January 2003, when the defendant was  
22 fighting with the Publications Review Board over the  
23 publication of his memoir, he told Bruce Wells that he was,  
24 quote, absolutely disgusted with the CIA and that the board's  
25 conduct was, quote, absolutely reprehensible. He told Wells

1 he'd be coming at the CIA with, quote, everything at his  
2 disposal.

3 Now, I want to talk to you very directly about the  
4 defendant's claims against the CIA. Discrimination is a  
5 serious matter. There is no place for it in the workplace,  
6 whether it's government or private sector. No one here is  
7 going to say otherwise.

8 But regardless of the merits of Mr. Sterling's claims  
9 against the CIA, one thing was abundantly clear: Mr. Sterling  
10 was very unhappy with the CIA. Everyone agrees Mr. Sterling  
11 was angry at the CIA. That's what matters in this case.

12 That is what gave Mr. Sterling the motive to take the  
13 secrets entrusted to him by the CIA, valuable secrets that the  
14 CIA had spent years investing in, and put a spin on them, the  
15 spin that he took to the Senate, the same one that showed up  
16 later in chapter 9, where the defendant is the hero.

17 What about some of the other people we've heard about  
18 in this trial? What about their motives? Let's start with  
19 Robert S. At least two things came across clearly in his  
20 testimony: One, this program was his baby, and he was very  
21 proud of it; and two, he had absolutely no reason to talk to  
22 Sterling -- excuse me, Risen.

23 This was a program that Mr. S. invested ten years of  
24 his career developing. What reason did he have to talk to  
25 Risen, let alone to tell him that his brainchild was somehow

1 botched? No reason.

2 And if Mr. S. had spoken to Mr. Risen, you'd expect  
3 there would be some additional details in the book, things that  
4 Mr. S. knew that the defendant didn't know. But conveniently  
5 in the book, the timeline lines up with the defendant's  
6 involvement in the program. Mr. S. was there from start to  
7 finish, but the book only covered the defendant's time.

8 How about Ms. Divoll from the Senate? She only knew  
9 the barest sketch of the details contained in chapter 9. She  
10 told you that. So did Don Stone. There was a memo written at  
11 the time in April of 2003.

12 Don Stone and Vicki Divoll didn't hear that this was  
13 a TBA 480 fire set. They didn't hear that there was a meeting  
14 in San Francisco. They didn't hear about the postman. They  
15 didn't hear that these plans were delivered to Vienna. They  
16 didn't hear about Merlin's compensation or whether he was a  
17 handling problem. None of their performance evaluations show  
18 up in chapter 9. They just didn't know.

19 And what motive did Ms. Divoll have to call Risen and  
20 talk about this program? None.

21 And finally, you've heard the defense actually  
22 suggest, actually suggest that Merlin may have been a source  
23 for Risen. Ladies and gentlemen, when you come through those  
24 doors and into this courtroom or that door into this courtroom,  
25 you don't check your common sense when you enter. There is no

1 reason in this world why Merlin would put his own life at risk,  
2 the life of his wife and his family, by talking to Mr. Risen  
3 about what he did while working for the CIA. He didn't even  
4 tell his wife what he was doing. She told you that.

5 When the defense asked Mrs. Merlin when she was  
6 testifying if they had actually been contacted by the KGB yet,  
7 she said, "No, not yet." These people live in abject fear,  
8 day-to-day, that the people from their former country are going  
9 to come get them. What reason would Merlin have to talk to  
10 James Risen? None.

11 What makes most sense, the commonsense answer is that  
12 the only person with motive was the defendant. That's question  
13 2.

14 Question 3, who had a relationship with James Risen?  
15 Again, the evidence in this case has established that only one  
16 person had a relationship to James Risen: Jeffrey Sterling.  
17 Go back to that first article after 9/11. It's Government's  
18 Exhibit 75. On November 4, 2001, Mr. Risen wrote an article  
19 citing unnamed sources for the fact that a CIA office had been  
20 destroyed on 9/11. That was five days after Jeffrey Sterling  
21 lost his appeal and was terminated from the CIA, five days, and  
22 then that story ran. A couple of months later, the defendant  
23 was gloating about it when he spoke to Carrie Newton Lyons  
24 about how he had disclosed that fact to a newspaper.

25 And then there was this article, ladies and

gentlemen. This is Government's Exhibit 83. It ran on March 2, 2002, about a month after the defendant refused to sign his final secrecy agreement. The byline is James Risen. The subject? The only subject of this article is Jeffrey Sterling. That's his picture. Jeffrey Sterling and his fight against the CIA. 1,630 words, ladies and gentlemen, that James Risen wrote about Jeffrey Sterling in *The New York Times*.

There is simply no better proof of an existing relationship between Jeffrey Sterling and James Risen than that article. Not only does Risen quote extensively from Sterling; he also quotes from another one of his PARs, the 1990 -- excuse me, the 1999 PAR that Sterling got during the EEO process. That's Exhibit 59.

Specifically, the article states that Sterling had received a positive performance evaluation which stated that he, quote, demonstrated good tradecraft in the handling of his assigned cases.

So you've got the 1999 PAR quoted in this article and the 2000 PAR quoted in chapter 9, both documents that Sterling had, both quoted in Risen's work.

But that wasn't the end of the relationship, not by any stretch. Take a look at Government's Exhibit 98. It's a summary of calls and e-mails between the defendant and James Risen. Special Agent Hunt took you through it yesterday.

The first call, first documented call is on

1 February 27, 2003. That was about two weeks after  
2 Mr. Sterling's final settlement offer lapsed and about a week  
3 before he showed up at the Senate.

4 Exhibit 98 shows a pattern of calls beginning in  
5 February 2003 and ending in November 2005, about a month before  
6 *State of War* was published. February 2003 to November 2005.  
7 During that time, Risen's contact with the defendant continued  
8 even when the defendant moved.

9 In February and March of 2003, the calls were from  
10 the defendant's home in Herndon, right here in the Eastern  
11 District of Virginia.

12 The next year, after Mr. Sterling had moved in with  
13 his friends, the Dawsons, in Missouri, the phone traffic  
14 continued, and after he moved out of the Dawsons' house later  
15 in 2004, Sterling continued to communicate by phone with Risen  
16 from the defendant's work phones.

17 In total, 47 calls, some very short, some longer, but  
18 47 times these individuals called each other. These calls  
19 began before Sterling went to the Senate. They continued  
20 through Mr. Risen's calls to Bill Harlow about his *New York*  
21 *Times* article that he was planning to write. They continued  
22 through the time when the article was squashed and through  
23 finally the lead-up to *State of War*'s publication.

24 And then there were the e-mails. First let's look at  
25 the e-mail from March 10, 2003. This was the e-mail that was



1 deleted from Mr. Sterling's e-mail account. It was deleted  
2 sometime three years later, around when he learned the FBI was  
3 investigating. It says: "I'm sure you've already seen this,  
4 but quite interesting, don't you think? All the more reason to  
5 wonder...J."

6 This is an e-mail from Mr. Sterling to James Risen.  
7 And what's the link that's included in this e-mail? It's an  
8 article, a CNN article titled, "Report: Iran Has 'Extremely  
9 Advanced' Nuclear Program."

10 The defendant sent this e-mail just five days, five  
11 days after he went to the Senate with his story, his story  
12 about how the classified program may have actually aided the  
13 Iranians. And wouldn't you know, five days later, he's  
14 e-mailing an article about Iran and its nuclear weapons program  
15 to James Risen.

16 This isn't an e-mail about race discrimination or his  
17 complaints against the CIA. This is about Mr. Sterling and his  
18 work and whether the Iranian nuclear program has been advanced.  
19 It says, "All the more reason to wonder."

20 What does Mr. Sterling want Risen to wonder about  
21 when he's sending him that? It's that story that he told the  
22 Senate, whether they had actually aided the Iranian nuclear  
23 weapons program.

24 It fits, ladies and gentlemen. It fits the  
25 defendant's spin, the one he gave the Senate and the one he

1 gave Risen.

2 That wasn't it for e-mails, though. There were the  
3 deleted e-mails Special Agent Hunt was able to recover from the  
4 Dawsons' computer. Let's take a look at a few.

5 December 23, 2003, after the defendant had left  
6 Virginia, Risen to Sterling: "Can we get together in early  
7 January?"

8 May 8, 2004, Risen to Sterling: "I want to call  
9 today. I'm trying to write the story. Jim." And, "I need  
10 your phone number again."

11 May 16, 2004, Risen to Sterling: "I am sorry if I  
12 have failed you so far. But I really enjoy talking with you,  
13 and I would like to continue. Jim."

14 Finally, June 10, 2004: "I can get it to you. Where  
15 can I send it?"

16 A few months after that last e-mail, Risen submitted  
17 a book proposal to Simon & Schuster. That's Government's  
18 Exhibit 128. That document contains Merlin's true first name,  
19 not his code name. His true first name.

20 Ladies and gentlemen, this evidence -- the 9/11  
21 article, the *New York Times* profile of the defendant, and the  
22 e-mail and phone traffic -- all make clear that not only did  
23 the defendant and Risen have a relationship; they maintained  
24 that relationship all the way through publication of *State of*  
25 *War*.

1           After the book came out in January of 2006, how many  
2 more calls did you see? How many more calls was Special Agent  
3 Hunt able to identify until sometime in the middle of 2007,  
4 when the request had ended?

5           Zero calls. No more calls between Mr. Sterling and  
6 Risen after the book came out.

7           The job was done, ladies and gentlemen. Mr. Risen  
8 wrote the story; it got published.

9           Three questions; three common answers. Who knew all  
10 the true details in chapter 9? The defendant. Who had a  
11 motive to disclose those facts and paint them in a false light?  
12 The defendant. And who had someone in the media who would  
13 listen to him? The defendant.

14           One other thing: After lunch, the Court will  
15 instruct you that the government only has to prove that the  
16 defendant was a source for Risen; that's all. So long as you  
17 conclude that Sterling was a source, one source, it's  
18 completely irrelevant whether he had any other -- whether  
19 Mr. Risen had any other sources for the same or different  
20 information related to this program or Merlin. Keep that in  
21 mind as you review the evidence.

22           There are nine charges in this case. After the  
23 lawyers finish up, as I mentioned, the judge will instruct you  
24 on the law that you should apply to the facts. Listen  
25 carefully to those instructions. I'm not going to repeat all

1 of them here, but let me break them down very briefly.

2 Six of the counts, Counts 1 and 2, 4 and 5 and 6 and  
3 7, address the defendant's unauthorized disclosure or  
4 communication of material related to Classified Program No. 1  
5 and Human Asset No. 1, or Merlin. Counts 1 and 2 charge the  
6 defendant with causing, causing the unauthorized communication  
7 of what's called national defense information to the general  
8 public via publication of *State of War* in 2006.

9 Counts 4 and 5 charge the defendant with the  
10 unauthorized communication of national defense information to  
11 James Risen in 2003, and Counts 6 and 7 charge the defendant  
12 with attempting to cause the unauthorized communication of  
13 national defense information to the general public through that  
14 *New York Times* article that Mr. Risen wanted to write and was  
15 about to publish until the meeting with Condoleezza Rice.

16 These charges are grouped in pairs, one count  
17 focusing on the disclosure of information and the other count  
18 focusing on the disclosure of a tangible item, the letter to  
19 the Iranians that Risen reproduced in chapter 9.

20 That's six of the charges. So what do you need to  
21 decide as to each? First, did the defendant have possession of  
22 the relevant information or letter relating to the national  
23 defense?

24 Again, there is no dispute that all of the true  
25 details about Classified Program No. 1 and Merlin that show up

1 in Risen's book were known to Mr. Sterling. They are the same  
2 details that Risen told Bill Harlow he was prepared to put in a  
3 *New York Times* article in 2003.

4           You also know that Sterling had access to the letter  
5 that shows up in chapter 9. Merlin testified that he gave the  
6 defendant a copy. Risen told the CIA in 2003 he had seen a  
7 letter.

8           I want you to remember a distinction between  
9 information generally and the physical document, the letter.  
10 The defendant is not charged with unlawfully possessing the  
11 information that came into his head when he was an employee at  
12 the CIA. When you leave the job, you can't purge that from  
13 your mind. He can lawfully possess that information forever.  
14 The problem is if you take that information and you disclose  
15 it.

16           The same is not true for the document. Once  
17 Mr. Sterling no longer had a need to know about Classified  
18 Program No. 1, his continued connection or retention of that  
19 document was unlawful. That possession was unlawful. He was  
20 not allowed to have it. In fact, Gayle Scherlis told you that  
21 when he was leaving the CIA, she instructed him that he was  
22 obliged to return any classified information that he had, and  
23 he did not.

24           Once you determine that the information or letter was  
25 in the defendant's possession, you must also determine whether

1 the material related to the national defense. The judge will  
2 tell you that something relates to the national defense, it's a  
3 term of art, if it is closely held by the government and could  
4 be damaging to the United States or used for the benefit of an  
5 enemy of the United States.

6           Once again, the evidence establishes that the  
7 information and document in question without question relate to  
8 the national defense. You heard witness after witness describe  
9 how closely held this program was. Secretary Rice told you  
10 this was one of the most closely held programs during her  
11 entire tenure as National Security Advisor. David Cohen, the  
12 boss of the New York office, told you this was one of the most  
13 closely held programs during his entire 35-year career with the  
14 CIA. David Shedd said the same thing.

15           Even the scientist, Walt C., who testified on one of  
16 the first days of trial, he told that you in over 40 years of  
17 experience between his work with the Air Force and his work at  
18 the National Laboratory, this program was the most closely held  
19 operation he'd ever worked on.

20           You also heard multiple witnesses discuss just how  
21 damaging that sort of disclosure could be. Secretary Rice  
22 commented on how few options the United States had to undermine  
23 the Iranian nuclear program. Robert S. and Charles Seidel  
24 talked about how devastating it can be to the United States'  
25 national security interests when a program like this is

1 exposed. Not only does it tell our foreign adversaries that we  
2 are targeting them; it tells them how we're doing it.

3 Disclosure of this sort of information has the  
4 potential to do real damage to our relationships abroad. If  
5 this country cannot keep its secrets, why would any other  
6 country share theirs with us? And if we cannot protect our  
7 human assets, why would anybody willingly become one?

8 Next, you must determine whether the defendant had a,  
9 quote, reason to believe disclosure could cause potential harm  
10 to the United States or aid a foreign nation. This is easy,  
11 ladies and gentlemen. Mr. Sterling was a trained case officer.  
12 He knew the implications of disclosing this information.

13 Finally, you have to determine that the defendant  
14 willfully or with an unlawful purpose communicated the  
15 information or caused another person to communicate it to  
16 someone who did not have a right to receive it. You've seen  
17 the defendant's secrecy agreement. He knew it was a crime to  
18 disclose classified information to anyone without appropriate  
19 clearances, anyone, let alone James Risen.

20 And how do you know he wanted to go one step further  
21 and cause Mr. Risen to communicate these same facts to the  
22 public at large? Because that's what reporters do, ladies and  
23 gentlemen. You talk to a reporter because you want them to  
24 tell your story. You don't go talk to a reporter because  
25 you're hoping that they'll keep all of your secrets. There's

1 no other reason to talk to a reporter.

2 Sterling did for years -- 47 calls, multiple  
3 e-mails -- because he knew Risen would be his mouthpiece and  
4 broadcast his version of events to the world, and that's what  
5 he did. That's how you know he willfully caused Risen to  
6 communicate those facts to the public.

7 Ladies and gentlemen, as to Counts 1 and 2, there's  
8 no dispute that *State of War* was sold in the Eastern District  
9 of Virginia, none. Those facts were communicated to people  
10 here in the Eastern District of Virginia, everyday folks,  
11 enemies and friends alike, who had no right to access that  
12 information.

13 There's also no dispute that the defendant was  
14 unemployed and living in Herndon, in the Eastern District of  
15 Virginia in earlier 2003, when Risen first picked up the phone  
16 and called Bill Harlow to tell him the details of his story  
17 about Classified Program No. 1 and Merlin. There is no dispute  
18 Sterling called Risen from his home in February 2003, and  
19 there's no dispute that Sterling e-mailed Risen the CNN article  
20 while Mr. Sterling was living in Herndon.

21 There's also no dispute that Mr. Sterling was in  
22 possession of classified CIA documents when his house in  
23 Missouri was searched in 2006. Four-and-a-half years after he  
24 had any access to CIA facilities, where did Mr. Sterling keep  
25 CIA documents? At his home. He had moved two times, and yet



1 there they were at his home. This is a man who keeps CIA  
2 documents at his home.

3 Again, when he left the CIA, he was living in  
4 Herndon, right here in the Eastern District of Virginia, during  
5 the same time Risen was preparing the *New York Times* story that  
6 Condoleezza Rice ultimately convinced the paper not to run.  
7 That's six of the counts. That leaves three additional counts.

8 Count 3 is similar to the first six I told you about.  
9 It has to deal with the defendant's unlawful retention of that  
10 letter. Again, Merlin told you he gave the defendant the  
11 letter. Where did the defendant keep CIA documents? At his  
12 home. Where was the first place he moved when he left the CIA?  
13 Right here, Herndon.

14 Count 9 charges the defendant with causing Risen to  
15 convey the CIA's property to the general public. What was the  
16 property? It was those secrets about Classified Program No. 1  
17 and Merlin.

18 The judge is going to instruct you that property can  
19 be something intangible, it can be secrets, and what's more  
20 valuable to the CIA than its secrets? The CIA put ten years  
21 into this classified program. Between case officers, people  
22 like Robert S. in the Counterproliferation Division, and all  
23 the people who worked on planning and implementing the program,  
24 that's thousands and thousands of man-hours.

25 What about the lab? The lab spent the better part of

1 two years and over a million-and-a-half dollars developing the  
2 fire set plans.

3 In order to establish the defendant's guilt as to  
4 Count 9 and whether he caused the conveyance of these -- this  
5 property in the Eastern District of Virginia, you must  
6 determine that the value of that information was \$1,000; that's  
7 all. There's no doubt that it far exceeded that amount.

8 And finally, Count 1, obstruction of justice, this  
9 count focuses on the deletion of the March 10, 2003 e-mail.  
10 You heard about it already. The defendant got a snapshot at  
11 three different times. They got the April 2006 snapshot,  
12 before the defendant knew any idea that there was an FBI  
13 investigation, that there was a grand jury investigation.  
14 After he received that, there were two more snapshots in July  
15 and October of 2006.

16 This e-mail, Government's Exhibit 102, appears in  
17 just the first one. So for some reason, it disappeared between  
18 April and July of 2006, three-and-a-half, almost  
19 three-and-a-half years after it was written. Why would  
20 somebody go back three-and-a-half years later and delete an  
21 e-mail?

22 Agent Hunt told you the whole account wasn't wiped  
23 out. There wasn't appreciable differences between the volume  
24 in batch 1 from April and the other two batches. This was  
25 targeted, ladies and gentlemen.

1           The defendant knew that the FBI was investigating,  
2           that there was a grand jury investigation, and that his work  
3           was at issue. And what did he work on? Iran and nuclear  
4           weapons programs.

5           THE COURT: Time's almost up.

6           MR. OLSHAN: Thank you.

7           The CIA has a right to keep its secrets secret for  
8           the safety and security of the American people. The evidence  
9           in this case has established that the defendant put his own  
10          selfishness and his own vindictiveness ahead of the American  
11          people. He made a decision to break his oath, and he made it  
12          knowing full well the ramifications that his actions could  
13          have.

14          It could mean scuttling a viable classified program  
15          that was employed not just once but multiple times, and it  
16          could mean endangering the life of Merlin, a man who had come  
17          to this country with his family as a refugee, seeking a better  
18          life, a man who had agreed to help the CIA and to put his life  
19          at risk for his new country.

20          The defendant risked all of it, and for what?  
21          Because he hated the CIA and he wanted to settle the score.  
22          Those aren't the actions of a patriot, ladies and gentlemen.  
23          Those are the actions of a criminal.

24          We have brought you the evidence. We have proven the  
25          defendant was a source for Risen. We have proven that he knew

1 the classified information that wound up in chapter 9. We have  
2 proven that he had the motive to disclose those facts and the  
3 letter so that they would get out to the public and harm the  
4 CIA, and we have proven that he had a relationship with  
5 Mr. Risen. We ask that you hold him responsible for his  
6 actions because he's guilty of each and every offense charged  
7 in the indictment.

8 Jeffrey Sterling was the hero of Risen's story.  
9 Don't let him be the hero of this one. Thank you.

10 THE COURT: All right, Mr. Pollack?

11 Why don't you wait one second, Mr. Pollack, while we  
12 get people settled.

13 MR. POLLACK: Your Honor?

14 THE COURT: Yes, sir.

15 CLOSING ARGUMENT

16 BY MR. POLLACK:

17 Ladies and gentlemen, make no mistake, this is a very  
18 important case to the government. It has assigned a team, a  
19 team of excellent lawyers. One of those lawyers, Mr. Olshan,  
20 just laid out a compelling argument setting forth the  
21 government's theory of how Mr. Sterling could have been a  
22 source of national defense information published by Mr. Risen.

23 The government has great lawyers. It has a great  
24 theory. It just made a great argument. What the government  
25 lacks is evidence. Yesterday, Agent Hunt candidly admitted

1 that to you.

2           Explaining how something could have happened is  
3 simply not enough. The government has to prove to you not  
4 just, as Mr. Olshan said, that Mr. Risen was a source -- I'm  
5 sorry, that Mr. Sterling was a source for Mr. Risen. It has to  
6 point to national defense information contained in chapter 9  
7 and present evidence to prove to you beyond a reasonable doubt  
8 that Mr. Sterling was the source for that information and that  
9 Mr. Sterling committed part of that crime in the Eastern  
10 District of Virginia.

11           The government cannot do that because there is no  
12 such evidence. The government's theory is not supported by  
13 evidence. It's not even the most likely theory of what  
14 actually happened.

15           The evidence, ladies and gentlemen, has shown that  
16 everything that Mr. Risen wrote could have and likely did come  
17 from sources other than Mr. Sterling and, yes, from people who  
18 had their own motive to talk to Mr. Risen. Some of what  
19 Mr. Risen wrote he got right. Some of it he got wrong.

20           The government has spent a lot of time in this trial  
21 putting in evidence about the things that Mr. Risen got wrong,  
22 but whether Mr. Risen's rendition of Classified Program No. 1  
23 is accurate or not is not an issue in this case. Likewise, the  
24 government has spent a lot of time putting on evidence about  
25 how important Classified Program No. 1 was, how important to

1 the CIA; to the National Security Advisor, Dr. Rice; and even  
2 to the President of the United States, George W. Bush.

3 Whether Classified Program No. 1 was a bad idea,  
4 whether it was poorly executed, or whether it was the most  
5 important intelligence operation this country has ever  
6 undertaken is not an issue in this trial. These things may be  
7 important to the CIA, they may be important to Merlin, they may  
8 be important to the government, but they should not be  
9 important to you.

10 Through this trial, the government has allowed the  
11 CIA to tell its side of the story of Classified Program No. 1,  
12 and it is a story very different than the one told by  
13 Mr. Risen. Whether or not the CIA has been successful in this  
14 trial in getting its reputation back is for others to judge.

15 If you're angry that Mr. Risen reported about a  
16 highly classified program, if you're unhappy that his reporting  
17 was not always accurate or even fair to the CIA, you cannot  
18 take that out on Mr. Sterling. Mr. Sterling did not provide  
19 national defense information about Classified Program No. 1 to  
20 Mr. Risen.

21 Where is the evidence that Jeffrey Sterling in 2000,  
22 before he left, printed out cables, snuck them out of the CIA,  
23 then proceeded to sit on them for three years, only to give  
24 them to Jim Risen in 2003? Where is the evidence that even if  
25 he had done that, he would have remembered years later details

1 that aren't in any of those CIA documents, like the fact that  
2 the mailbox in Vienna was on the left, the fact that Merlin  
3 covered the plans with an old newspaper, details that Bob S.  
4 and Merlin do remember?

5 Where is the evidence that Mr. Sterling would have  
6 used language in describing the operation to Mr. Risen  
7 like "high-voltage block" or "firing set" that Merlin and  
8 Bob S. used, but there's no evidence that Mr. Sterling used  
9 even when he was involved in the program three years earlier?

10 Mr. Sterling knew about Classified Program No. 1  
11 since November of 1998. He lost access to the documents  
12 related to the program in May of 2000. In August of 2001, he  
13 filed a discrimination suit against the CIA. He was told he  
14 was being fired from the CIA in October of 2001.

15 Mr. Risen wrote about Mr. Sterling's discrimination  
16 suit in *The New York Times* in March of 2002. By March of 2003,  
17 Mr. Sterling had known about Classified Program No. 1 for  
18 years. He had been upset about his treatment at the agency for  
19 years. He had been in litigation with the CIA for years. He  
20 had made settlement offers, he had had settlement offers  
21 rejected for years. And he had known Mr. Risen for at least a  
22 year if you believe the government that he was the source for  
23 confirmation of a publicly known fact that the CIA had an  
24 office in New York at 9/11. He had known Risen for longer than  
25 that because that article was in November of 2001.

1           Yet all of this time, there is no evidence that  
2 Mr. Risen knew anything about Classified Program No. 1. In  
3 March of 2003, Mr. Sterling legally talked to SSCI, the Senate  
4 Select Committee on Intelligence, about Classified Program  
5 No. 1. Less than a month later, Mr. Risen calls the CIA,  
6 Mr. Harlow, to tell him that Mr. Risen, that he knows about  
7 Classified Program No. 1.

8           Why does Mr. Risen learn about Classified Program  
9 No. 1 then? Why? Because the Hill had just learned about it  
10 then. SSCI had just learned about it then from Mr. Sterling.  
11 And as often happens, people on the Hill talk, and when they  
12 do, reporters like Mr. Risen listen, and then they go out and  
13 investigate what they've learned, and that's why they win  
14 Pulitzer Prizes.

15           Mr. Risen went to his sources to see what he could  
16 learn after finding out from SSCI that a former CIA officer,  
17 Jeffrey Sterling, had come in with complaints about a program,  
18 and he started calling his CIA sources, and what happened?  
19 They became very alarmed.

20           Now, Bob S., he told you that he was a colonel, but  
21 he also told you that there were a lot of generals above him,  
22 and when the generals learned that Jim Risen of *The New York*  
23 *Times* had a story about a classified program and were afraid  
24 that he was going to disclose it, they told Bob S. to brief  
25 them on that program, and Bob S. told you, "I went back and I



1 accessed the cables in 2003 so I could brief the generals."

2 Now, the CIA and National Security Advisor  
3 Condoleezza Rice both worked to kill the story. Dr. Rice told  
4 you the administration had two tactics when trying to kill a  
5 story. One is to confirm the story unofficially and ask the  
6 reporter not to publish it.

7 The other, the one chosen here, was to try to  
8 convince the author that he was jeopardizing national security  
9 and that he had the story wrong. The problem with this tactic  
10 is that you have to give the reporter additional information to  
11 try to convince them that he has the story wrong.

12 Now, Dr. Rice, she only participated in a single  
13 meeting, and she told you she doesn't know what the generals at  
14 the CIA did separately. And what the evidence in this trial  
15 shows is what they did is they fed Mr. Risen information and  
16 documents about the program to try to convince him that the  
17 story was wrong and that he would jeopardize national security  
18 by publishing it, and in doing so, they gave him more detail  
19 about the program than what Mr. Risen had learned from SSCI.

20 Did Bob S. have a motive to feed information to  
21 Mr. Risen? Absolutely he did. His program, his baby is about  
22 to be in *The New York Times*. He has every incentive to feed  
23 CIA cables to Risen and convince him this wasn't a screwed-up  
24 program; this was an excellent program.

25 Merlin, does Merlin have a motive to assist in that

1 process? Merlin thinks his life is going to be in danger if  
2 this program is disclosed. Does he have a motive to get  
3 information, directly or indirectly, to get information to  
4 Risen to get this story killed? You bet he does.

5 But their strategy ultimately backfired. As  
6 Mr. Trump put it in the opening, they won the battle, but they  
7 lost the war. Mr. Risen not only ends up writing the story  
8 later in a book, but he's now armed with a lot more detail,  
9 detail that came from the CIA in its failed effort to kill the  
10 story.

11 Worse yet for the CIA, the story is still written  
12 from essentially the same perspective, in some ways an accurate  
13 perspective, that Mr. Risen started with when he learned  
14 secondhand about Mr. Sterling's meeting on the Hill, and the  
15 story made the CIA look bad.

16 So let's start with Mr. Sterling's meeting on the  
17 Hill. Mr. Sterling had no documents with him. That makes  
18 sense. He hadn't had access to documents in years.

19 He said that current events -- now, remember, this is  
20 right before the United States is going to invade Iraq, based  
21 in part on Iraq's supposed program of weapons of mass  
22 destruction. Mr. Sterling says in that environment of current  
23 events, he decided he wanted to come in and talk to SSCI about  
24 concerns he had about a weapons of mass destruction  
25 counterproliferation program he had worked on.

1 Now, we know that Mr. Sterling did not have much of a  
2 technical background, and he was taken aback in San Francisco  
3 when he saw that Merlin's immediate reaction on seeing the  
4 plans was to say that there was something wrong with them, and  
5 we know he tried to raise that with Bob S.

6 Now, Bob S. might have thought he was being tactful,  
7 but as Merlin put it, Bob S. told Jeffrey Sterling to shut up,  
8 and the plans were not changed. Sterling had raised his  
9 concerns with his superior and was told to shut up. He was  
10 already having problems with the agency, and he believed he was  
11 being held to an unfair standard. Is it surprising that he  
12 didn't feel comfortable raising the issue again?

13 He went to the Inspector General of the CIA with his  
14 employment issues in December of 1999. All he was told was  
15 that he could appeal his complaints internally with the CIA.  
16 The Inspector General closed its file on Jeffrey Sterling two  
17 days after it opened it. That's Government's Exhibit 34. Is  
18 it surprising that Jeffrey Sterling didn't take his concerns  
19 about Classified Program No. 1 to the Inspector General?

20 Okay. Why didn't he go to SSCI sooner? You can take  
21 him at his word, he was prompted by current events, or you can  
22 believe that he had grown so disappointed with the agency by  
23 this point that he was no longer to accept their assurance that  
24 this was a good program and wanted somebody outside of the  
25 agency to take a look at it.

1           Either way, Sterling legally told Ms. Divoll and  
2 Mr. Stone about the program and about his concerns. You heard  
3 their testimony: He was calm. He was rational. He did not  
4 claim it was a rogue operation. He did not claim that the CIA  
5 had just handed blueprints for a working fire set to the  
6 Iranians. What he did was he told Mr. Stone and Ms. Divoll  
7 that he had concerns about the program that had never been  
8 addressed to his satisfaction.

9           Go ahead and put up Government Exhibit 101.

10           He told them that the human asset immediately saw  
11 that there were problems about the plans. He was concerned  
12 that Iran might be able to figure out and correct some of the  
13 problems with the plans and that if they did, they might learn  
14 new information about a nuclear fire set that they didn't have  
15 before.

16           Whether he is right or he is wrong, whether that  
17 concern is justified or is not justified -- let me start with  
18 that third paragraph -- is not the issue. He expressed his  
19 concern.

20           The second concern he expressed to SSCI was that he  
21 did not think the CIA should have given the Iranians the fire  
22 set plans all at once. By just leaving the plans, there was no  
23 way to assure that the Iranians would follow up. They might  
24 just take what we gave them, learn something from it, or sell  
25 them.

1           And we know that, in fact, in the almost six years  
2 from the time that the plans were left in Vienna to the  
3 publication of *State of War*, the Iranians never did follow up  
4 with Merlin. But again, whether Sterling's concern was  
5 justified or not is not the issue. He was legally expressing  
6 his concerns.

7           And he was not told how, if at all, SSCI was going to  
8 follow up. Yet he seemed satisfied with the visit. That's  
9 what Mr. Stone wrote in his memo.

10           Mr. Stone now says that he recalls in the reception  
11 area after the meeting Mr. Sterling's lawyer making some  
12 comment about wanting the CIA to act quickly, didn't know if  
13 that related to the employment issues or related to Classified  
14 Program No. 1. No mention of the press, but Mr. Stone from his  
15 experience with other people thought that that was a reference  
16 to the press.

17           But Ms. Divoll said that that didn't happen at all.  
18 Ms. Divoll said that there was no such threat, no suggestion  
19 that any drastic action was going to be taken such as going to  
20 the press. And it's not reflected in Mr. Stone's memo.

21           And Ms. Divoll was there the entire time. Remember,  
22 Ms. Divoll said she ended up escorting Mr. Sterling out of the  
23 offices. If this happened, it would have to have happened in  
24 Ms. Divoll's presence, and she says it didn't happen at all.

25           Special Agent Hunt told you that she had heard a

1 rumor that Sterling's lawyer had made such a threat. Again,  
2 not clear whether it related to going public with the  
3 employment concerns, which he had every right to do, or if it  
4 related to Classified Program No. 1. So Special Agent Hunt  
5 tried to chase that rumor down, and guess what? She wasn't  
6 able to corroborate it.

7 She wasn't able to corroborate it because there was  
8 not a threat to go public with Classified Program No. 1. What  
9 Mr. Sterling did with Classified Program No. 1 was he legally  
10 talked to SSCI about it.

11 Now, Mr. Stone says that at some point afterwards,  
12 Mr. Risen called him, and claims that Mr. Stone did not speak  
13 with Mr. Risen. Agent Hunt's phone record search did not find  
14 that call.

15 Now, that could mean that Mr. Stone is lying about  
16 that call, but it could also mean that phone records -- a phone  
17 record search would not show a call through the Senate  
18 switchboard, and if that's true, that means that anyone at SSCI  
19 could have had a phone conversation with Mr. Risen about  
20 Mr. Sterling's meeting there.

21 Ms. Divoll said that while her old boss had a  
22 relationship with Mr. Risen and asked Ms. Divoll to talk to the  
23 press on occasion, she said that she never talked directly to  
24 Risen, doesn't know him. Now, you can believe that or not  
25 believe it. It doesn't matter whether Ms. Divoll directly

1 spoke to the press.

2           What we do know is that when Ms. Divoll shared closed  
3 door SSCI business with someone outside the committee within a  
4 week of when Mr. Stone's memo was written, what she disclosed  
5 ended up in *The New York Times* the very next day in a story  
6 written by Jim Risen.

7           Now, the Senate is a very -- the Senate Committee on  
8 Intelligence, Ms. Divoll told you, is a very partisan place.  
9 The Republicans had just taken over. Democrats love stories  
10 that embarrass Republicans. Here was a former CIA officer  
11 coming in with concerns about a counterproliferation weapons of  
12 mass destruction operation right before the invasion of Iraq.  
13 Was there someone on the Hill who wouldn't have minded getting  
14 that story out to the press?

15           Mr. Goco told you that he didn't really have a way to  
16 follow up after asking the CIA about the program at his next  
17 scheduled meeting, so SSCI didn't do anything further in  
18 response to Mr. Sterling's concerns. Mr. Sterling would not  
19 know that. He was not told what action SSCI would take, but if  
20 we look at the book, at page 211, at paragraph 92, it tells us  
21 that SSCI took no action, something that Mr. Risen had to have  
22 learned from SSCI.

23           What did Sterling tell Stone and Divoll? Again, this  
24 is Government Exhibit 101. He told them that the program  
25 involved getting faulty plans for a fire set to Iran. He told

1     them that the National Labs had modified the plans. Both Stone  
2     and Divoll recall that Sterling mentioned a Russian scientist,  
3     and Divoll recalls that the plans were passed to the Iranians  
4     in Europe.

5             Call up 106, please.

6             Less than a month later, Jim Risen is calling  
7     Mr. Harlow at the CIA. What does he know about the program  
8     when he calls Mr. Harlow? He knows it involves faulty plans  
9     for a fire set. He knows that the plans were modified at the  
10    National Labs. He knows that the operation involved a Russian  
11    scientist.

12            Did, did the memo get all the details right about the  
13    Russian scientist? No, but Mr. Sterling told the Hill about a  
14    Russian scientist. Mr. Risen knows it, and he knows that the  
15    plans were given to Iran in Europe, exactly what Vicki Divoll  
16    recalls from that meeting. Not Vienna, in Europe.

17            And he knows that it happened in 2000, and he doesn't  
18    know if the program is still in operation. In other words, he  
19    knows exactly what Jeffrey Sterling told Divoll and Stone.

20            Now, the government has pointed out that Risen also  
21    knew that the code name was Merlin and neither Stone nor Divoll  
22    remember that Sterling mentioned the code name Merlin. He may  
23    have and they didn't remember it when they wrote up their memo  
24    seven weeks later, or Risen could have gotten that information  
25    afterwards, when he followed up on the information that he



1 learned from SSCI.

2 In this first call with Mr. Harlow, Mr. Risen also  
3 says that he knows that the program had been approved by  
4 President Clinton and wants to know if Bush had reapproved it.  
5 There is no evidence that Mr. Sterling told Divoll or Stone  
6 anything about President Clinton approving the program, but  
7 Stone and Divoll told you that others on SSCI already knew  
8 about Classified Program No. 1 before Sterling came in.

9 If Risen followed up with people on the Hill, people  
10 like Bill Duhnke, the Republican partisan, asking questions  
11 about a supposedly flawed program, would that person tell Risen  
12 that that was a program that was approved by a Democratic  
13 president?

14 Now, as you know, when the book finally comes out,  
15 it's not just the version that Mr. Sterling told SSCI. It's  
16 that version on steroids. Now it's not just Mr. Sterling who  
17 has concerns about the program; it's Merlin himself who has  
18 concerns about the program. He's wandering around Vienna,  
19 concerned that he's about to give a nuclear, working nuclear  
20 fire set to the Iranians in a rogue operation.

21 Now, how did that happen? Sterling said that Merlin  
22 immediately saw a problem with the plans, and he said that  
23 Merlin later got cold feet. Both are true, but Risen puts them  
24 together to create an impression that is not accurate. But  
25 it's also not something that Mr. Sterling ever said.

1           Risen does not ultimately tell Mr. Sterling's story.  
2 Mr. Risen tells Mr. Risen's story. Now, whether Mr. Risen was  
3 simply mistaken because he misunderstood some of the facts,  
4 whether he was engaging in hyperbole to sell a book, or whether  
5 he found others that gave him a different version than Jeffrey  
6 Sterling told the Hill does not matter. Chapter 9 is Risen's  
7 story; it is not Sterling's story.

8           After the first call from Risen to Mr. Harlow, both  
9 the CIA and the NSC, the National Security Council, are  
10 alarmed. We know that. Bob S. starts accessing cables to  
11 brief the generals at the CIA. On April 3, that first phone  
12 call, Risen was unsure whether the program was still in  
13 operation.

14           Let's go to Exhibit 112, if we can. It's now April  
15 25. It's three weeks later, and Mr. Risen calls the CIA again.  
16 Has Mr. Risen been sitting on his hands for these three weeks,  
17 or has he gone out and got additional information from what he  
18 learned from the Hill?

19           Risen now knows that this is an ongoing program.  
20 Indeed, the lead for his story, he tells Mr. Harlow, is that  
21 the United States has had an ongoing program, something he  
22 didn't know three weeks earlier, and more importantly,  
23 something that Mr. Sterling, who hadn't been at the agency for  
24 years, did not know and could not have told Mr. Risen.

25           Mr. Risen got that by talking to CIA sources after he

1 talked to the Hill. He now knows, he now knows that the  
2 program involved nuclear firing sets, plural, and that it was  
3 part of a larger program to inject flawed designs into Iran.

4 Now, when Sterling was on the Hill, he used the  
5 term "fire set." It's in Exhibit 101. It's also the term  
6 Risen used when he called Harlow initially. It's in 106.

7 Now, in 112, Risen is using the term "firing set,"  
8 the term that Bob S. used in cables.

9 And by April 25, Mr. Risen tells Harlow he has  
10 documents, something he did not say on April 3. Where did he  
11 get those documents? He got those documents from people that  
12 knew that in 2003, this was an ongoing operation, wanted to  
13 convince Risen of that, and wanted to kill the story.

14 Now, "fire set" and "firing set" may be the same  
15 thing -- may mean the same thing. Mr. Sterling says tomato;  
16 Mr. S. says "tomato"; they mean the same thing; but Risen has  
17 now switched from using the language that Sterling used when he  
18 talked to the Hill to the words that Bob S. uses in cables.

19 Now, Risen only knows that they're running this  
20 operation against Iran, and that's all he's asking about.  
21 There'd be no reason for the CIA generals to tell him: Oh, by  
22 the way, we're also running it with these other countries.

23 They don't want to give him information that he  
24 doesn't have and isn't going to write about. What they want to  
25 do is convince him that he's wrong about what he does want to

1 write about, and so they want to give him more information  
2 about the Iranian operation, the Vienna operation, to convince  
3 him that he's got it wrong.

4 Now, where did the information that Risen got come  
5 from? Let's talk about Merlin. Merlin is told by Bob S.  
6 there's been a leak. Merlin, according to Bob S., has chutzpa.  
7 Merlin, according to Bob S., was chosen for this program  
8 because Merlin is willing to take risks and do them in a way  
9 that they won't be traced back to the CIA.

10 What does Merlin recall about the San Francisco  
11 meeting? In his testimony, he was asked, "Who attended the  
12 meetings in San Francisco?"

13 And the judge is going to instruct you it is your  
14 recollection of this testimony that controls, not mine, but let  
15 me suggest to you that I believe that he testified that in San  
16 Francisco, he met Jeff for the first time. There was another  
17 CIA person there, I believe Lenny Bob, if I remember correctly.  
18 There was a representative from the National Laboratory.

19 Mr. Trump says, "There was?"

20 "Yes, from Los Alamos or Sandia."

21 Now, we know from everybody else's testimony that, in  
22 fact, there was nobody from the National Laboratories at the  
23 meetings in San Francisco. Merlin is mistaken. He's the only  
24 one who believes that there was a representative of the  
25 National Laboratories there.

1           What does the book say? Page 98, paragraph 125: "In  
2 a luxurious San Francisco hotel room, a senior CIA official --  
3 Bob -- involved in the operation, walked the Russian through  
4 the details of the plan. He brought in experts from one of the  
5 National Laboratories to go over the blueprints that he was  
6 supposed to give to the Iranians."

7           Also, the book uses the word "blueprints." That's a  
8 word that does not appear in any cable. I asked Bob S. about  
9 the term "blueprints," and Bob S. told me that would be an  
10 inaccurate term. But Merlin testified, not in response to any  
11 question, in his own terminology: "What was discussed at the  
12 meetings in San Francisco?"

13           "The schematics and blueprints were introduced."

14           "This letter, what were you supposed to do with the  
15 letter?"

16           "I was supposed to pass it to the Iranians with  
17 documents, blueprints, and schematics."

18           The only person affiliated with Classified Program  
19 No. 1 who uses the word "blueprints" is Merlin. The  
20 term "blueprints" appears in chapter 9 repeatedly. By my  
21 count, "blueprint" or "blueprints" appears in chapter 9 at  
22 least 20 times.

23           The note. The cables and the testimony make clear  
24 that it was decided in advance that there will be a note to the  
25 person in Vienna on the outside of the envelope, the inside of

1 which would contain the plans and a cover letter directed to  
2 the person back in Iran, but Merlin, Merlin testified that on  
3 the spot in Vienna, he had the idea to write a handwritten  
4 cover note when he realized he was going to have to leave the  
5 package at a mailbox rather than give it to somebody.

6 "I have the time to think, and I realize nobody's in  
7 the office. I, I thought it would be suspicious, somebody puts  
8 this very expensive documents, these very important documents  
9 without any explanation, and I decided to wrote very short this  
10 sized note where I said I came many times to your office. It  
11 was closed. Please take attention to this envelope. This is  
12 important and valuable information."

13 Merlin returns, and he's debriefed by Bob S. and  
14 Mr. Sterling together. The cable of that debriefing is Exhibit  
15 44. It does not mention a handwritten cover note by Merlin.  
16 Review it carefully. Only Merlin knows about this note.

17 What does the book say? Page 204 in paragraph 57:  
18 "In Vienna, the Russian went over his options one more time and  
19 made a decision. He unsealed the envelope with the nuclear  
20 blueprints and included a personal letter of his own to the  
21 Iranians."

22 Now, Risen gets a lot of things wrong here. He  
23 thinks that this personal note that he quotes at length is  
24 actually the cover letter that was done in advance, the draft  
25 of which appears in Exhibit 35. He also thinks that the letter

1 is warning the Iranians of flaws in the plans rather than  
2 telling them that the plans are incomplete.

3 But what is important is not what Mr. Risen got  
4 wrong; what is important is what Mr. Risen got right, that  
5 Merlin wrote a personal note on the spot in Vienna that had not  
6 been planned in advance. Merlin knows this. It is not  
7 reflected in any cable, and it ends up in Mr. Risen's book.

8 The times that things happened, "Merlin, what time  
9 did you get inside the office building?"

10 "The first time I came about 8 a.m. on a Friday. The  
11 office was closed. I came back after lunch, like 1 or 2 p.m."

12 Look at Exhibit 44, the debriefing. No time is  
13 reflected. Bob S. testified he didn't recall Merlin ever  
14 telling him the times.

15 What does the book say? Page 205, paragraph 67: "By  
16 8 a.m., he found 19 Heinestrasse."

17 Page 206, paragraph 71: "At 1:30 p.m., I got the  
18 chance to be inside of the gate." That one is in quotes.

19 Merlin testified that the times were 8 a.m. and  
20 between 1 and 2 p.m. The book says 8 a.m. and 1:30 p.m. and  
21 quotes Merlin.

22 Mr. Risen reports that this information came from a  
23 document that Merlin later wrote. That's at page 206,  
24 paragraph 71. But Merlin and Bob S. both testified that Merlin  
25 did not write any report of his trip to Vienna. The

1 information is not in any cable.

2 After the generals at the CIA learned that Risen had  
3 the story and were asking for information about Classified  
4 Program No. 1, did Bob have Merlin write him a report of the  
5 trip that someone at the CIA leaked to Risen? There's no  
6 evidence that the time is written out anywhere. Whether or not  
7 they were, we know that Merlin knew them, and they end up in  
8 the book.

9 We've talked about the terminology, the fact that  
10 "high-voltage block" is the Russian term and that "firing set"  
11 is Bob S.'s term, and that's what ends up in the book.

12 There's a quote from Merlin at page 203, paragraph  
13 50, where he's asking for directions. Now, Merlin says in his  
14 testimony that he did, in fact, know enough German that he  
15 could have asked for directions, but he claims that he wouldn't  
16 have because it would look suspicious for a Russian scientist  
17 to ask for directions to the address of the IAEA.

18 Now, it's not at all clear why that makes sense.  
19 Remember, this is a building that has not just the IAEA Mission  
20 in it; it also is an apartment building. Why would it be  
21 suspicious for somebody to ask for an address for an apartment  
22 building?

23 But that doesn't matter because the book doesn't say  
24 that he asked for the address. It just says that he asked if  
25 people knew where that street was. There would be no reason



1 for Merlin not to have asked where the street was. There's no  
2 place that it's in a cable, and it's in quotations attributed  
3 to Merlin in the book.

4 Ladies and gentlemen, most importantly, the cover  
5 letter. The cover letter is at the heart of most of the  
6 charges in this case. That's the document that supposedly  
7 Mr. Sterling leaked to Mr. Risen, gave to Mr. Risen, physically  
8 gave the document itself. There's no evidence, no evidence  
9 that Mr. Sterling had that letter ever.

10 Now, in Merlin's testimony, he admitted the drafts of  
11 the cover letter were typed on his home computer. He would  
12 talk to -- take a printout to Mr. Sterling, they would go over  
13 it, they would talk about revisions, and then Merlin would take  
14 the paper back to his house, make the revisions on his home  
15 computer.

16 The cover letter is quoted at length at pages 204 and  
17 205 of the book. This is a real problem for Merlin if the only  
18 version of that letter resides on his home computer. As  
19 Mr. Olshan says, so on cross-examination, he claims that he  
20 gave a copy of the final version of the letter to Mr. Sterling  
21 when he met him about two weeks before leaving for Vienna.

22 There's one problem with that testimony: It's not  
23 true. I mean, go ahead and put up that timeline.

24 We know Exhibit 35 is a January 10, 2000, meeting  
25 between Merlin and Mr. Sterling where they come up with the

1 fifth version of the cover letter, which Mr. Sterling then in a  
2 cable sends on to headquarters.

3 On January 14, 2000, Exhibit 36, Bob S. writes the  
4 cable directing that the words "for free" be added to the  
5 letter. Mr. Olshan talked about this.

6 On February 14, 2000, there's a meeting between  
7 Merlin, Bob S., and Mr. Sterling. This is the meeting that  
8 Merlin storms out of. Bob S. did not say that Mr. Sterling was  
9 given a copy of the final letter at this meeting. It's not  
10 reflected in the cable, and you can be sure if Mr. Sterling was  
11 given a copy of that letter, it would have to have been  
12 reflected in that cable.

13 On February 21, 2000, there is a meeting, this is the  
14 final meeting, it's Exhibit 38, between Bob S. and Merlin.  
15 This meeting takes place without Mr. Sterling being there.

16 And then on March 3, Merlin delivers the cover letter  
17 and the plans in Vienna, and that's in Defendant's Exhibit 3.

18 As Mr. Olshan noted, the version that's in the book  
19 includes the "for free" language. It is the final version of  
20 the letter. It is the version that resides on Merlin's  
21 computer.

22 Merlin told you he did not bring back a version of  
23 this letter from Vienna. The only place it resides is on his  
24 computer. So Merlin says, "Well, I gave a copy to Jeff two  
25 weeks before I left when I met with him."

1 He didn't meet with Jeff alone two weeks before he  
2 left. The last time that he met alone with Jeff before he left  
3 is on January 10, two months earlier, and at that point,  
4 the "for free" language didn't exist yet. He couldn't have  
5 given Mr. Sterling a copy of the final letter with the "for  
6 free" language, the copy that appears in the book, he could not  
7 have given that to Mr. Sterling two weeks before he left. He  
8 couldn't have given it to Mr. Sterling at any time because he'd  
9 never met alone with Mr. Sterling when that language existed.

10 Merlin's mistaken belief that someone from the  
11 National Labs was in San Francisco, that Merlin decided at the  
12 last minute to include a personal cover note, the term  
13 "blueprints," "high-voltage block," the times that Merlin got  
14 into the building, the quote asking for directions, and most  
15 importantly, the final version of that letter, all of those  
16 things came from Merlin. Merlin attempted to mislead you  
17 otherwise.

18 Bob S. Directly or indirectly, Bob S. was likely a  
19 source for chapter 9. In 2003, in 2004, in 2005, Mr. Sterling  
20 no longer has access to cables. Bob S. does. Mr. Sterling  
21 (sic) also still has access to Merlin. Mr. Sterling does not.

22 Bob S. designed disinformation campaigns and created  
23 legends for a living. To quote none other than the Rolling  
24 Stones, he was practiced in the art of deception, and he had  
25 Merlin, who had chutzpah. Whether he gets the information from

1 Merlin and passes it on himself, whether he gets the  
2 information from Merlin and passes it on through others,  
3 whether Merlin passes it on, it has to be some combination of  
4 people that still have access to the program.

5           What is in the book that sounds like it came from Bob  
6 S.? We've discussed the term "firing set."

7           The Wine Country. Mr. Olshan tells you that's right,  
8 Sonoma is not in any cable. Now, it's true that Mr. Sterling  
9 would have known that, but is that a fact that Mr. Sterling is  
10 going to remember years later?

11           We know that Bob S. remembers it now, 16 years later,  
12 because it's important to him because he cares about wine, and  
13 to him, there's a big difference between Napa wine and Sonoma  
14 wine, but there's no reason for this detail to be important to  
15 anybody else, and this detail that is uniquely important to Bob  
16 S. is in the book.

17           The book details the names of various streets in  
18 Vienna, a city that Bob knew well even before he went there on  
19 more than one occasion to case for this operation. There's no  
20 evidence that Mr. Sterling's ever been to Vienna. Who would  
21 remember the details about these street names years later, Bob  
22 S. or Mr. Sterling?

23           More tellingly is Bob S. in his testimony recalled  
24 that the mailbox in which Merlin left the package was to the  
25 left of the door. Look at Exhibit 44, the debriefing cable.

1 It's not in there. Yet this detail appears in the book at page  
2 206, paragraph 71.

3 Why would Jeffrey Sterling remember that detail years  
4 later? We know that Bob S. did either on his own or because he  
5 had talked again to Merlin.

6 Even more telling, Bob S. in his testimony recalled  
7 that Merlin saw an Austrian postman and that he covered the  
8 package with a newspaper. Neither of those details is in  
9 Exhibit 44 or any other cable. Even if Mr. Sterling had  
10 somehow secreted cables with him and held them for three years,  
11 he wouldn't know this unless he remembers it. There's no  
12 evidence he would remember those details, but Bob S. remembers  
13 both, the postman and the newspaper. Whether he remembers them  
14 on his own or because he's talked to Merlin, both appear in the  
15 book.

16 Why is it particularly telling that he recalls these  
17 details? Remember, Bob S. tried to explain away how Risen  
18 could have known that the mailbox was on the left. Maybe Risen  
19 saw that when he traveled to Vienna. But Bob S. couldn't  
20 explain away how it is Risen could possibly have known that  
21 Merlin saw an Austrian postman or that he left the plans under  
22 a newspaper. Only Merlin could know that, and it's not in any  
23 cable.

24 The national defense information that appears in  
25 chapter 9 that did not come from the Hill came from Merlin, Bob

1 S., or someone at the CIA.

2 What was Mr. Sterling's relationship with Mr. Risen?  
3 Because Mr. Olshan is correct, they clearly did have a  
4 relationship. Was Mr. Sterling hiding that fact? You saw  
5 Exhibit 83. He's got his picture in *The New York Times* in a  
6 story by Jim Risen where he's quoted in his own name. Of  
7 course he has a relationship with Mr. Risen.

8 And absolutely, Mr. Risen is writing about his  
9 employment discrimination suit, and Mr. Sterling is given  
10 unclassified PARs as part of that suit. You haven't heard it's  
11 illegal in any way for him to give those unclassified PARs to  
12 Mr. Risen, who's following his employment discrimination suit,  
13 and yes, he wants attention to that suit both inside and  
14 outside of the agency. That's why he hired outside lawyers,  
15 that's why he filed a lawsuit, and that's why he wants that  
16 lawsuit publicly covered.

17 And yes, part of Exhibit 59 is quoted in Exhibit 3,  
18 Risen's story, and yes, and part of 60 is quoted in chapter 9.  
19 By 2006, when Mr. Risen publishes the book, how does he know  
20 that the PAR he obtained back in 2002, the report on Sterling's  
21 discrimination suit, is talking about Merlin?

22 He knows that Sterling speaks Farsi and is an Iranian  
23 expert. He reports that in Exhibit 83. He knows that Sterling  
24 worked in New York from January '99 until 2000. He knows after  
25 talking to the Hill in 2003 that Sterling came to talk about an

1 asset that had been used in an operation in 2000 against Iran,  
2 and from talking to whoever his sources were at the CIA after  
3 he had talked to the Hill, he knew that Merlin was a known  
4 handling problem, demanding, overbearing in nature, walked out  
5 of meetings. Mr. S. described him as a difficult asset. The  
6 cables describe him as somebody unable to follow even the  
7 simplest and most explicit direction.

8           How hard would it be for Mr. Risen to piece together  
9 that when he's got a PAR praising Sterling's handling of a  
10 known -- of an asset who's difficult, demanding, overbearing,  
11 and a known handling problem, how hard would it be for him to  
12 figure out that that asset was Merlin?

13           In 2003 -- well, again, 2003, Mr. Sterling goes to  
14 SSCI to talk about Classified Program No. 1. Risen is  
15 following the discrimination suit. Risen learns from the Hill  
16 that Sterling has been out talking about the classified  
17 program. Risen and Sterling have several conversations in this  
18 period.

19           Is Risen trying to get information from Sterling  
20 about Classified Program No. 1? Almost certainly. Does that  
21 mean that Sterling gave him any? No.

22           What do we know that he gave him? Risen comes to him  
23 and says, "Hey, heard you were up on the Hill talking about  
24 this classified program."

25           Sterling sends him an e-mail with a publicly

1 available CNN article and says, "Yeah, makes you wonder."

2 That's what he passed on to Mr. Risen when he was  
3 asked about Classified Program No. 1. He talks to Mr. Risen  
4 about his discrimination suit.

5 Mr. Risen is able to keep his discrimination claims  
6 and his concerns about Classified Program No. 1 separate. We  
7 know this. When he talks to HPSCI, he talks about the  
8 employment discrimination claims. He doesn't talk about  
9 Classified Program No. 1. When he talks to SSCI, he talks  
10 about Classified Program No. 1. He doesn't talk about his  
11 employment claims. And in March 2002, he talked to Risen about  
12 his discrimination case and did not talk to him about  
13 Classified Program No. 1.

14 Over the years, Sterling and Risen have spoken a  
15 number of times, but there's no evidence, no evidence that they  
16 speak about Classified Program No. 1 in a way that Mr. Sterling  
17 is providing him national defense information. Mr. Olshan says  
18 that Sterling is the hero of chapter 9. I don't know if that's  
19 accurate or not. We know that Sterling has a relationship with  
20 Risen and we know that Risen seems to have some sympathy for  
21 Sterling if you read that article, article 83.

22 But more importantly, how, how does the chapter  
23 portray Merlin? Mr. Olshan said as a bumbler. That's funny,  
24 the cables say he can't follow the simplest direction. He  
25 can't even find the mission after having been given explicit



1 instructions.

2 Mr. Olshan says that the chapter portrays Robert S.  
3 as pushing forward with the program -- Robert S. was pushing  
4 forward with the program -- and that Jeffrey Sterling is  
5 portrayed as a competent case officer. Guess what? He was.  
6 Read those PARs. Every witness on the stand said that he did a  
7 good job. Even, even Bob S. said he did a good job on this  
8 operation. If you read the PARs, he got high marks for the  
9 operations. He got high marks for his security measures.

10 Their criticism of him was that he didn't go -- not  
11 how he handled the cases that he was given but that he didn't  
12 do enough to go out and develop new cases.

13 Let's look at the timeline. If we can go ahead and  
14 put up that modified Exhibit 98?

15 This is the government exhibit, but I've added, I've  
16 added some things that the government didn't put on the  
17 timeline. On March 3, the PRB suit that has been in the works  
18 for a couple of months is filed by Mr. Sterling's lawyer  
19 against the CIA. March 6, there is an order that transfers his  
20 employment discrimination suit from New York to Virginia.

21 Mr. Olshan said in this time frame in March,  
22 Mr. Sterling is out of options. He's not out of options. His  
23 case has just been transferred to Virginia, and it's going to  
24 move forward. That's Exhibit 94.

25 After the public PRB suit is filed and after the

1 public order transferring the case, he has a number of  
2 conversations with Mr. Risen. What were they likely talking  
3 about? The PRB suit and the discrimination suit.

4 Let's go to page 4. On March 3, 2004, a year later,  
5 the employment discrimination suit is dismissed by the Virginia  
6 court. And again, there are a series of conversations over the  
7 next couple of months between Mr. Sterling and Mr. Risen, about  
8 27 minutes' worth of conversations in March, about 43 minutes  
9 of conversations by mid-May, in the two months since the  
10 employment suit was dismissed.

11 And let's go to page 7. What does Risen say? "I am  
12 sorry if I have failed you so far."

13 How has he failed him? He hasn't written a single  
14 article about the dismissal of the employment discrimination  
15 suit. He hasn't followed up on the employment discrimination  
16 suit with any published article since 2002. "But I really  
17 enjoy talking to you, and I'd like to continue. Jim."

18 Now, if we can go to page 10?

19 In July of 2004, according to the records pulled by  
20 Agent Hunt, Mr. Risen goes to Vienna to research the book. In  
21 September of '04, he submits the book proposal. These are  
22 Exhibits 128 and 129. In this period of time, when he's  
23 clearly, when Risen's clearly working on the book, how many  
24 conversations does he have with Jeffrey Sterling? None.

25 And finally, the government points out that their

1 relationship seemed to end at the end of 2005 and notes that  
2 the book was published in January of 2006, and that's true, but  
3 it's also true that in January 2006, Agent Hunt told you this,  
4 the Supreme Court decided not to take the appeal from  
5 Mr. Sterling's employment discrimination suit. Their  
6 relationship ends when the employment discrimination suit ends.

7           The government's suspicion of Jeffrey Sterling is not  
8 evidence. As we learned, Benjamin Franklin said that three can  
9 keep a secret if two of them are dead. In this case, at least  
10 90 people had a secret. Someone, several people didn't keep  
11 it. But the evidence of one who did, who time and time again  
12 went through legal channels, was Jeffrey Sterling.

13           So what does the government rely on? They rely on  
14 1987 telephone rotary phone instructions and an interim  
15 evaluation report from when he was a trainee in 1993 that they  
16 find in his house. Nothing to do with the charges in this  
17 case, nothing to do with Classified Program No. 1, nothing to  
18 do with any other classified operation.

19           He shouldn't have had those documents in his house,  
20 but they're not evidence that he disclosed national defense  
21 information about Classified Program No. 1 to Jim Risen.

22           The obstruction of justice charge. From August 3 --  
23 sorry, from August of 2003 to July of 2004, Mr. Sterling had  
24 use of the computer in the Dawson home. That's in stipulation  
25 11. On April 19, 2006, two years later, data is preserved at

1 hotmail, and this March e-mail to Mr. Risen with the CNN  
2 article is still on there. By July 14, it's no longer in the  
3 hotmail account.

4 Mr. Risen is served with a grand jury subpoena on  
5 June 16, 2006. That's Exhibit 139. Look at the attachment to  
6 139. 139 tells Mr. Sterling that there's a grand jury  
7 proceeding. It also tells him what the grand jury wants him to  
8 bring with him in the way of documents. It wants him to bring  
9 any classified documents he has. It wants him to bring PARs  
10 that he has. Clearly, they're looking for those 1999 and 2000  
11 PARs that have been quoted by Risen. It says that it wants  
12 information about his time at the agency.

13 There is not a single category in there of things  
14 that they're interested in that has anything to do with his  
15 communications with Risen about publicly available information.

16 The computer is turned over by Ms. Dawson to the FBI  
17 in August of '06. If that e-mail is not there, that would mean  
18 Mr. Sterling deleted it, he would have had to have deleted it  
19 by 2004, two years earlier, when he lost access to the  
20 computer.

21 If it is still there, it means that he didn't delete  
22 it; it's still there. The government has not explained to you  
23 how it is that Mr. Sterling had the ability to get into  
24 hotmail's database and delete it from hotmail's records.

25 Also, we have no idea when it was that it got deleted

1 from hotmail or why. Mr. Sterling's not put on notice to the  
2 grand jury until June, and the data is preserved again in July.  
3 That could have been deleted anytime between April and July,  
4 before Mr. Sterling even knew about the subpoena, the subpoena  
5 that tells him that they're not interested in this e-mail.

6 So you now have to believe that Mr. Sterling kept  
7 the, the e-mail on his computer but then somehow got into  
8 hotmail's records to delete them because he was put on notice  
9 of the fact that the grand jury was not interested in this  
10 document. There is no obstruction of justice in this case.

11 Now, ladies and gentlemen, all of our lives would  
12 have been a lot easier if Mr. Risen would have revealed who his  
13 sources were and who they were not for his reporting on  
14 Classified Program No. 1, but he didn't, and whether you think  
15 that's a good thing or a bad thing is no more relevant than  
16 whether you think Classified Program 1 was a good program or a  
17 bad one or Mr. Risen's reporting good or bad.

18 The government says that chapter 9 is only about  
19 Jeffrey Sterling's time with the program. Well, they say that  
20 only after telling you to ignore the entire rest of the  
21 chapter. The chapter starts on pages 193 and 194 with an event  
22 that happened in 2004, after Mr. Sterling is gone. It ends its  
23 discussion about Classified Program No. 1 with information  
24 about the NSA tracking the person from Vienna going back to  
25 Tehran. There's no evidence that anyone ever told Mr. Sterling

1 that. There's no reason he would have told Mr. Risen that.

2 The government's suspicion that because the book  
3 talks in detail about things that Mr. Sterling knew simply is  
4 not enough. The Hill knew what Mr. Sterling told them.  
5 Mr. Risen had sources at the CIA.

6 They have a theory; I have a theory. I think my  
7 theory is the more likely theory, but frankly, that doesn't  
8 matter. We're not dealing in competing theories. We're  
9 dealing in evidence, and it is the government's burden to put  
10 on evidence beyond a reasonable doubt that it was Mr. Sterling.

11 You heard from any number of CIA, former/current CIA  
12 people in this case, and Mr. Sterling himself spent years of  
13 his life with the CIA. Why? Because all of these people want  
14 to defend our national defense. Why? Because they believe in  
15 a system where you are not convicted of extraordinarily serious  
16 crimes because the government believes that you committed them.

17 You took an oath to decide this case only on the  
18 evidence presented to you, not on theories. The evidence does  
19 not prove beyond a reasonable doubt that Mr. Sterling committed  
20 the offense charge -- the offenses charged.

21 Now, this is my last opportunity to speak to you.  
22 The government gets to get up, they get to go last. They get  
23 the last word, and that's appropriate. It is the government's  
24 burden to prove the case, and the burden is a high one.  
25 Indeed, in this case, it is an insurmountable one.

1           The government has great lawyers. One of them is  
2 going to get up now, and they're going to think of an argument  
3 that I have not thought of. They're going to discuss a piece  
4 of evidence that I didn't mention or I didn't discuss  
5 thoroughly enough. They're going to make a compelling  
6 argument.

7           Yes, the government is allowed to use circumstantial  
8 evidence, and there may be cases where guilt can be established  
9 beyond a reasonable doubt based on circumstantial evidence, but  
10 this is not one of those cases. Be very careful. It's  
11 dangerous.

12           Can you put up Exhibit 146?

13           THE COURT: You've got one more minute.

14           MR. POLLACK: Thank you, Your Honor.

15           Can you blow it up? Yeah, blow that up.

16           The government offered this to you as circumstantial  
17 evidence that Mr. Sterling had a classified document on his  
18 computer pertaining to Classified Program No. 1, circumstantial  
19 evidence that he provided that information to Mr. Risen.

20           Ladies and gentlemen, it would have been a tragedy if  
21 we had not found Mr. Gilby or if he had not remembered that he  
22 had used a software called Merlin. You would have convicted  
23 Jeffrey Sterling of grave charges because Mr. Gilby researched  
24 scheduling software for use in his business renovating homes.

25           When you get back to the jury room, before you begin

1 your deliberations in earnest, please think carefully about how  
2 I would have responded to the government's final arguments had  
3 I been given the chance. Look at the evidence carefully, and  
4 make my arguments for me. You'll make them better than I can.  
5 And Mr. Sterling deserves that.

6 Then and only then begin deliberating, and when you  
7 are done, do the only thing that you can do on the evidence  
8 that has been presented: Find Mr. Sterling not guilty of each  
9 and every count.

10 Thank you.

11 THE COURT: All right, Mr. Trump, you have ten  
12 minutes.

13 MR. TRUMP: May we approach, Your Honor?

14 THE COURT: Yes.

15 (Bench conference on the record.)

16 THE COURT: Mr. Trump? Yes.

17 MR. TRUMP: I just want to make sure that I don't  
18 step over the line should I make this argument, but counsel  
19 suggested that there was some sort of conspiracy within the CIA  
20 to kill this story, to feed documents to Jim Risen tasking  
21 Bob S. to write a report after the fact to feed to Risen.

22 Obviously, Judge, if there had been any such  
23 conspiracy, if anybody had actually done that, if there were  
24 documents, we were legally obligated to produce that to the  
25 defense.



1 MR. POLLACK: If you have them.

2 MR. TRUMP: And we didn't, and the CIA was legally  
3 obligated to provide them to us. There is no such documents.  
4 There is no such evidence.

5 THE COURT: Well, you need to be careful from my past  
6 experience in these cases. You're not aware of any such  
7 evidence. You don't want to put yourself in the -- you can't  
8 testify, if that's what your concern was about, about that. I  
9 think you don't want to make that argument.

10 MR. TRUMP: Okay. I just want to make sure I don't  
11 go too far, Your Honor.

12 THE COURT: I don't think you want to make that  
13 argument.

14 MR. TRUMP: Okay.

15 (End of bench conference.)

16 MR. TRUMP: May I consult with cocounsel for one  
17 minute?

18 THE COURT: Yes.

19 It's always a bad sign when a lawyer pours a glass of  
20 water.

21 (Laughter.)

22 THE COURT: We used to have a colleague here who  
23 wouldn't let the lawyers have water. It made the trials go  
24 very quickly.

25 (Laughter.)

1 THE COURT: All right, Mr. Trump, are you ready?

2 REBUTTAL ARGUMENT

3 BY MR. TRUMP:

4 Good afternoon.

5 Sorry, Your Honor, something doesn't seem to be -- I  
6 only have a few minutes, so I'll just address a few points.

7 Don't overlook the obvious. Don't get lost in conjecture and  
8 speculation and possibilities and probabilities.

9 Circumstantial evidence can be compelling. It can be  
10 powerful. It can be sufficient to convict. If you look  
11 outside and you see that it's wet, you know it rained. You  
12 don't have to see the rain to know it's true.

13 Counsel just went through a scenario for which there  
14 is absolutely no evidence whatsoever. The idea that Jim Risen  
15 had a source somewhere on Capitol Hill, that somehow someone  
16 from SSCI talked to James Risen, there's no evidence that that  
17 happened. There's no evidence that then he called Bill Harlow  
18 and there was some sort of conspiracy, some sort of group  
19 effort by the CIA to feed him documents in an effort to kill  
20 the story, that they enlisted Merlin, they enlisted Bob S.,  
21 that they asked Bob S. to write after-the-fact reports which  
22 they could then feed to Mr. Risen to support an effort to kill  
23 the story. There's absolutely no evidence whatsoever that that  
24 ever happened.

25 The evidence is that Risen called Harlow, that there

1 was a meeting at the White House. That was the interaction  
2 between the CIA and James Risen in April about this story.

3 The idea that Risen was able to write this chapter of  
4 this book based on other sources, on other information, without  
5 the defendant, without the help of the defendant, the one who  
6 had a motive, the one who said he was going to come after the  
7 CIA, the one who had an ongoing --

8 MR. POLLACK: Your Honor, I'm sorry, I have to  
9 object. That statement is not even coming in for the truth.  
10 He can't argue it.

11 THE COURT: The jury's recollection of the evidence  
12 is what will govern them in their deliberations. If counsel  
13 have misstated the evidence, the jury will remember that.

14 Go ahead, Mr. Trump.

15 MR. TRUMP: The one who had an ongoing relationship  
16 with Risen since 2001, a relationship that abruptly ends with  
17 the publication of the book in 2006, who was the case officer  
18 assigned to this operation during the relevant time frame, who  
19 was a participant and knowledgeable, who did have access while  
20 he worked at the CIA to all of the cables that Bob had access  
21 as well, as well as all the other case officers, who is the  
22 only person who had knowledge of every fact known to Risen,  
23 from the true name of the asset to his \$5,000 salary, to the  
24 technical and logistical aspects of the operation, who had  
25 received a copy of the letter quoted in the book from Merlin a

1 week or two prior to the Vienna trip.

2 Now, counsel can say that it didn't happen, but the  
3 only evidence in the record is that Merlin said he gave a copy  
4 of that letter to the defendant, who, like Risen, did not know  
5 about the ongoing operations, and even though, yes, Mr. Risen  
6 said that it was an ongoing program, but when he actually wrote  
7 the book, he didn't. He wrote it in the time frame of Jeffrey  
8 Sterling.

9 The 2000 PAR, there is absolutely no way, and you  
10 will have it in evidence, there is no way without the defendant  
11 telling Risen that this PAR relates to Merlin and this  
12 operation, that he would be able to figure that out on his own.  
13 Look at it.

14 He's the only person who said, falsely, that the  
15 operation may have given nuclear secrets to the Iranians. And  
16 why did he wait five years? Because at this point in time, he  
17 had lost all hope of a financial settlement with the agency.  
18 It was done.

19 Now, yes, he had ongoing litigation with respect to  
20 the PRB, but the prospect of getting money was done. It was  
21 over.

22 And as of March 10, 2003, he sent Risen an e-mail  
23 about the CNN article, just five days after his trip to SSCI.  
24 Now, you saw a comparison of the Harlow memo and the Stone  
25 memo, and yes, there's similar information in there because the

1 information comes from the same source. It comes from Jeffrey  
2 Sterling to SSCI, it comes from Jeffrey Sterling to James  
3 Risen, but Risen had more detailed information. He had, he had  
4 talked with the defendant. By this time, he's getting more and  
5 more information. He's preparing to write the article.

6 And again, look at the phone calls. Look at the  
7 phone records. There's a whole cluster of records indicating  
8 continuing contact in March and April between the defendant and  
9 James Risen.

10 The other suspects. Merlin. There is absolutely no  
11 evidence whatsoever that Merlin had any sort of relationship  
12 with James Risen, none. No motive whatsoever. None. It  
13 ruined his relationship with the CIA. He lost his job  
14 essentially. There is absolutely no evidence in this record to  
15 suggest that Merlin had any contact whatsoever with James  
16 Risen, that he was tasked by the CIA with Bob to try to kill  
17 the story. Nothing.

18 Merlin never knew about the deeply embedded flaws.  
19 They kept that from him. He didn't know about the Red Team  
20 efforts. That was information that was never provided to him.  
21 He doesn't know anything about the PAR. He doesn't know  
22 anything about the SSCI meeting.

23 The note? There was a discussion of a handwritten  
24 note. In fact, it was something that was raised by the  
25 defendant as an additional suggestion to the cover letter. It

1 was raised, it was discussed in the cable that the defendant  
2 had brought up having two notes, two documents, one a  
3 typewritten letter addressed to the official that he had  
4 engaged with in terms of the e-mails, and then a note on the  
5 top -- on the outside of the package to the person in Vienna so  
6 that they could get in touch. It was something that was  
7 actually suggested by the defendant.

8           The quotes, we don't know how it was that Risen  
9 purportedly quotes a report of Merlin's trip to Vienna. Bob S.  
10 testified he had never seen such a report. Merlin said he did  
11 not prepare a written report. When asked about the passage in  
12 the book by the defense counsel, Merlin stated, "Well, maybe  
13 the defendant secretly taped me; I don't know."

14           Plausible? Perhaps. More plausible than Bob S.  
15 getting tasked to write an after-the-fact document by the CIA  
16 in order to feed it to James Risen in order to kill the story.

17           Again, Bob S., as my cocounsel explained, this was  
18 his baby. He is not going to leak the information to James  
19 Risen. This is ten years of his life.

20           And again, there's absolutely no evidence that he had  
21 any sort of relationship with James Risen. He had no knowledge  
22 of the defendant's PAR, no knowledge of the SSCI meeting.

23           How do the details get into the book about Vienna?  
24 James Risen went to Vienna. He walked those streets. He  
25 looked at those streetcars. He went to that building. He saw

1 the same things that Merlin saw. That's how it gets up -- ends  
2 up in the book.

3 And what's interesting is that defense counsel pulls  
4 information from interviews, from testimony, from facts in the  
5 record. You should believe Vicki Divoll when she says this.  
6 You should believe Don Stone when he says this. You should  
7 believe Bob when he talks about fire set or firing set. You  
8 should believe Merlin when he says this because it fits into  
9 his narrative.

10 But when they say they did not provide information to  
11 James Risen, when they say they had no relationship with James  
12 Risen, then don't believe them.

13 Phone calls and the e-mail. Counsel came up with a  
14 story to try to explain the series of phone calls and e-mails  
15 from 2003 through 2005. Look carefully at each of the clusters  
16 of communications between the defendant and Risen.

17 There's a group of communications in March and April  
18 of 2003. What is happening at that point? James Risen is  
19 going to the CIA. He says he has a story; it's nearly  
20 complete; he's ready to publish.

21 There's a second cluster, primarily in  
22 April-May-June, mostly June. Right before what happens? Risen  
23 submits a book proposal to Simon & Schuster.

24 Look at the June 10, June 11, June 13 series of  
25 events, the Federal Express, and then four calls at the end of,

1 end of June. And then what happens? Very little activity for  
2 a long period.

3 Then another cluster of calls in August of 2005 and  
4 then in November of 2005, and what is happening at that point?  
5 Final touches to the book, which is then published and released  
6 in 2006.

7 This case is not about politics. It's not about  
8 salvaging the reputation of the CIA. What happened here was a  
9 big deal. Nuclear weapons, the capabilities of our  
10 adversaries, that's a big deal. The compromise of this  
11 operation, this asset, ruining ten years of work under two  
12 different administrations, wasting millions of dollars, giving  
13 away our secrets, our strategic advantages, endangering the  
14 lives of an asset, his family, that all is a big deal.

15 THE COURT: One minute.

16 MR. TRUMP: You were given a very rare, a very unique  
17 glimpse into the lives of those who work for the CIA. You  
18 heard from case officers who toil for years in the shadows.  
19 I'm sure they find their work rewarding, fascinating at times,  
20 but it comes with a heavy, heavy price: no public accolades,  
21 no discussion with friends and family, sometimes not even with  
22 their colleagues. And they must forever, forever keep their  
23 country's secrets. That's their solemn promise.

24 But they serve, and we rest easier as a result.  
25 Sometimes they stand in harm's way so that we don't have to.



1 They are true patriots.

2 On April 5, 1999, Merlin and the defendant met,  
3 Exhibit 24. At that meeting, Merlin asked the defendant what  
4 would happen if his work for CIA would ever get exposed? The  
5 defendant assured him he should not worry, that will never  
6 happen.

7 Jeffrey Sterling could not keep his promises.  
8 Jeffrey Sterling betrayed his country. He betrayed the CIA.  
9 He betrayed his colleagues. He betrayed Merlin. Jeffrey  
10 Sterling is not a patriot. He is the defendant, and he is  
11 guilty.

12 THE COURT: All right, ladies and gentlemen, you've  
13 now heard all of the closing arguments. Again, the case is by  
14 no means finished because you have not gotten the instructions  
15 from the Court. So I want you to now take your lunch break,  
16 I'll ask you to be back here approximately 25 after, and then  
17 you'll get the instructions.

18 Please do not begin any deliberations, and continue  
19 to follow my cautions about not interacting with anything  
20 outside of the courtroom that could possibly taint your thought  
21 process, and we'll see everybody back here at 25 after. Thank  
22 you.

23 (Recess from 12:25 p.m., until 1:25 p.m.)  
24  
25

1 A F T E R N O O N S E S S I O N

2 (Defendant present, Jury out.)

3 THE COURT: All right, before we bring in the jury,  
4 again the ground rules are while the Court's instructing, no in  
5 and out of the courtroom, so I assume that's going to be taken  
6 care of.

7 We gave you over the lunch break, there are four jury  
8 instructions that have been slightly changed, and there's a new  
9 one. Let me take 11(a), the classification markings had been  
10 submitted by the government, I think, earlier, but I needed  
11 also -- and this comes from our court security people -- to  
12 advise the jury as to how they must approach the three still  
13 classified exhibits, so I want to know whether there's any  
14 objection to the language. It's 11(a). It should be in the  
15 small, independent package that each of you have, if there's  
16 any objection to that additional language.

17 So what I've added there is, "Because Exhibits 142,  
18 143, and 144 remain classified as Secret, you may not  
19 communicate the contents of these exhibits to anyone after this  
20 trial is concluded. You should draw no inference as to the  
21 guilt or innocence of the defendant from the fact that you  
22 cannot communicate anything about these exhibits."

23 Is there any objection to that?

24 MR. MAC MAHON: No objection from the defense, Your  
25 Honor.

1 THE COURT: I assume --

2 MR. TRUMP: That's fine.

3 THE COURT: All right, good. All right, so that's  
4 11(a) if you want to put it in your packet.

5 Then if you look at, we've made the modifications we  
6 talked about to Exhibit -- to instruction page 24. We've added  
7 the exhibit numbers 142 through 145. That's the 404(b)  
8 evidence exhibit -- I'm sorry, instruction, and we in the last  
9 paragraph struck out "or crimes." So "the defendant is not on  
10 trial for any acts not alleged in the indictment," all right?

11 MR. MAC MAHON: Thank you, Your Honor.

12 THE COURT: No objection to that, correct?

13 Okay. Possession, which is 31, we have changed the  
14 tense to the past tense in the paragraph for Counts 1, 4, and  
15 6, so it says, "by a person who held an appropriate security  
16 clearance and had a need to know at the time the person  
17 acquired the classified information," and then we've added the  
18 "namely, a letter related to Classified Program No. 1" in the  
19 next paragraph.

20 Any problem with that new instruction?

21 MR. MAC MAHON: No, Your Honor.

22 THE COURT: All right? So make sure you replace that  
23 in your packets.

24 And then the only change we made to 41, we had  
25 intended to have the date so that the jury doesn't have to go

1 back and forth rummaging through the instructions, so we've  
2 just added the dates that were alleged in that count. All  
3 right, any problem with that? No?

4 MR. MAC MAHON: Not from the defense, Your Honor.

5 THE COURT: All right, then I believe we are about  
6 ready to bring the jury in. Are there any other last-minute  
7 matters? Were all the exhibits taken care of at the close of  
8 business yesterday? Was there any issue with any of the  
9 physical exhibits?

10 MR. FITZPATRICK: No, Your Honor.

11 THE COURT: I'm sorry?

12 MR. FITZPATRICK: No, Your Honor.

13 THE COURT: No? Mr. Olshan?

14 MR. OLSHAN: As a housekeeping matter --

15 THE COURT: Yes, sir.

16 MR. OLSHAN: -- Exhibit 176 was a stipulation.

17 It's the last one we moved in. The exhibit that goes  
18 to the jury just needs to be executed by the parties.

19 THE COURT: Let's do that right now. So let me have  
20 176 pulled out of the stack. Do you have them?

21 MR. OLSHAN: We don't have the official evidence  
22 binder.

23 THE CLERK: No, I have it.

24 MR. OLSHAN: May I approach?

25 THE COURT: Yes. So you -- have you signed it? Has

1 anybody signed it?

2 MR. OLSHAN: I don't believe so.

3 THE COURT: All right. So just pull 176 out.

4 Mr. MacMahon, while that's being done, was there some  
5 issue you had as well?

6 MR. MAC MAHON: No, Your Honor.

7 THE COURT: Okay.

8 MR. MAC MAHON: I'm just taking the chance to stand  
9 up.

10 THE COURT: You can do that during, during the charge  
11 if you want.

12 MR. MAC MAHON: I'll be fine, Your Honor. Thank you  
13 very much.

14 THE COURT: I mean, frankly, you don't even have to  
15 be here for the charge. You know what I'm going to say.

16 MR. MAC MAHON: I know, but I wouldn't do that, Your  
17 Honor.

18 THE COURT: All right, that's fine.

19 MR. OLSHAN: One moment, Your Honor?

20 THE COURT: Yes, sir.

21 MR. OLSHAN: We need to grab a copy of that one.

22 It's just a stipulation. It shouldn't be an issue. If it's  
23 easier to --

24 THE COURT: I'm sorry? You need a copy?

25 MR. OLSHAN: The formal exhibit binder does not have

1 a version of it, have the exhibit. If the defense has a copy,  
2 we can just sign it.

3 MR. MAC MAHON: We'll see if we have one.

4 THE COURT: All right. Did you-all do your indexes  
5 of the exhibits?

6 MR. OLSHAN: Yes.

7 THE COURT: You're looking over your shoulder,  
8 Mr. Olshan. Is it in the courthouse -- courtroom?

9 MR. FRANCISCO: Yes.

10 THE COURT: We have it?

11 Did you show it to defense counsel? Is there any  
12 objection to the form of the index? I usually have defense  
13 counsel actually initial it just to make sure there's no  
14 argument that there's something that was said in the index that  
15 could be an issue.

16 All right, so 176 is fully endorsed now? It's all  
17 set.

18 MR. OLSHAN: Thank you, Your Honor.

19 THE COURT: All right. And the -- again, the index,  
20 no objections to the index? Are you still looking at that,  
21 Mr. Pollack?

22 MR. POLLACK: Your Honor, if I can have just a  
23 minute?

24 THE COURT: All right. And the defense list is so  
25 short, I'm assuming there's no objection to -- we don't have a

1 defense index. Do you have one?

2 MS. HAESSLY: Yes, we have one, Your Honor.

3 THE COURT: All right. Hold on.

4 Ms. Copsey, would you go get that?

5 All right, any objection, Mr. Trump?

6 MR. TRUMP: No.

7 THE COURT: All right, that's fine. So the defense  
8 list is in.

9 Well, I'll tell you what, I want to start charging  
10 the jury. Mr. Pollack, you can be looking at that at the same  
11 time. If there's an objection, we still haven't sent it in to  
12 the jury, and we can correct that afterwards, all right?

13 MR. POLLACK: Yes. There are a couple of issues, but  
14 we can take them up later.

15 THE COURT: All right. Mr. Wood, let's bring the  
16 jury in.

17 (Jury present.)

18 THE COURT: Have a seat, ladies and gentlemen. Thank  
19 you.

20 All right, now that you have heard all of the  
21 evidence to be received in this trial and each of the arguments  
22 of counsel, it becomes my duty to give you the final  
23 instructions of the Court as to the law that is applicable to  
24 this case and which will guide you in your decisions.

25 All of the instructions of law given to you by the

1 Court -- those given to you at the beginning of the trial,  
2 those given to you during the trial, and these final  
3 instructions -- must guide and govern your deliberations.

4 It is your duty as jurors to follow the law as stated  
5 in all of the instructions of the Court and to apply these  
6 rules of law to the facts as you find them from the evidence  
7 received during the trial.

8 Counsel have quite properly referred to some of the  
9 applicable rules of law to you in their closing arguments. If,  
10 however, any difference appears to you between the law as  
11 stated by counsel and that as stated by the Court in these  
12 instructions, you are, of course, to be governed by the  
13 instructions given to you by the Court.

14 You are not to single out any one instruction alone  
15 as stating the law but must consider all of the instructions as  
16 a whole in reaching your decisions.

17 Neither are you to be concerned with the wisdom of  
18 any rule of law stated by the Court. Regardless of any opinion  
19 you may have as to what the law ought to be, it would be a  
20 violation of your sworn duty to base any part of your verdict  
21 upon any other view or opinion of the law than that given in  
22 these instructions of the Court, just as it would be a  
23 violation of your sworn duty as judges of the facts to base  
24 your verdict upon anything but the evidence received in the  
25 case.



1           You were chosen as jurors for this trial in order to  
2 evaluate all of the evidence received and to decide each of the  
3 factual questions presented by the allegations brought by the  
4 government in the indictment and the pleas of not guilty of the  
5 defendant.

6           In deciding the issues presented to you for decision  
7 in this trial, you must not be persuaded by bias, prejudice, or  
8 sympathy for or against any of the parties to this case or by  
9 any public opinion.

10           Justice through trial by jury depends upon the  
11 willingness of each individual juror to seek the truth from the  
12 same evidence presented to all of the jurors here in the  
13 courtroom and to arrive at a verdict by applying the same rules  
14 of law as are now being given to each of you in these  
15 instructions.

16           During this trial, I permitted you to take notes. As  
17 I advised you at the beginning of the trial, many courts do not  
18 permit note taking by jurors. You are instructed that your  
19 notes are only a tool to aid your own individual memory, and  
20 you should not compare your notes with those of other jurors in  
21 determining the content of any testimony or in evaluating the  
22 importance of any evidence.

23           Moreover, you are 12 coequal judges of the facts.  
24 The memory or opinions about the evidence of a juror who took  
25 extensive notes is no more or less deserving of consideration

1 than the memory or opinions about the evidence held by a juror  
2 who took few or no notes. Your notes are not evidence and are  
3 by no means a complete outline of the proceedings or even a  
4 list of the highlights of the trial. Above all, your memory  
5 should be your greatest asset when it comes time to deliberate  
6 and render a decision in this case.

7 Now, the evidence in this case consists of the sworn  
8 testimony of the witnesses, regardless of who may have called  
9 them, all exhibits received in evidence, regardless of who may  
10 have produced them, and all stipulations of fact agreed to by  
11 the parties.

12 Any proposed testimony or proposed exhibit to which  
13 an objection was sustained by the Court and any testimony or  
14 exhibit ordered stricken by the Court must be entirely  
15 disregarded. Anything you may have seen or heard outside the  
16 courtroom is not proper evidence and must be entirely  
17 disregarded.

18 Questions of the lawyers are not evidence. Only a  
19 witness's answer to a question is evidence. Objections,  
20 statements, and arguments of counsel are not evidence in the  
21 case.

22 You are to base your verdict only on the evidence  
23 received during the trial. In your consideration of the  
24 evidence received, however, you are not limited to the literal  
25 statements of the witnesses or to the literal assertions in the

1 exhibits. In other words, you are not limited solely to what  
2 you see and hear as the witnesses testify or as the exhibits  
3 are admitted. Instead, you are permitted to draw from the  
4 testimony and exhibits which you find reliable such reasonable  
5 inferences as you find justified in the light of your  
6 experience and common sense. Inferences are simply conclusions  
7 which can reasonably be drawn from the evidence received during  
8 the trial.

9           There is nothing particularly different in the way  
10 that a juror should consider the evidence in a trial from that  
11 in which any reasonable and careful person would treat any very  
12 important question that must be resolved by examining facts,  
13 opinions, and evidence. You are expected to use your good  
14 sense in considering and evaluating the evidence in the case  
15 for only those purposes for which it has been received and to  
16 give such evidence a reasonable and fair construction in the  
17 light of your common knowledge of the natural tendencies and  
18 inclinations of human beings.

19           If any reference to a witness's testimony or the  
20 exhibits either by the Court or by counsel does not coincide  
21 with your own memory of the evidence, it is your memory of the  
22 evidence which controls during your deliberations and not that  
23 of the Court or of counsel.

24           It is the duty of the Court to admonish an attorney  
25 who out of zeal for his or her cause does something which I

1 feel is not in keeping with the rules of evidence or procedure.  
2 You are to draw absolutely no inference against the side to  
3 whom an admonition of the Court may have been addressed during  
4 the trial of this case.

5 And during the course of the trial, I occasionally  
6 asked questions of a witness. Do not assume that I hold any  
7 opinion on the matters to which my questions may relate. The  
8 Court may ask a question simply to clarify a matter, not to  
9 help one side of the case or hurt the other side.

10 It is the sworn duty of an attorney on each side of a  
11 case to object when the other side offers testimony or exhibits  
12 which that attorney believes is not entirely admissible -- or  
13 properly admissible. Only by raising an objection can a lawyer  
14 request and obtain a ruling from the Court on the admissibility  
15 of the evidence being offered by the other side. You should  
16 not be influenced against an attorney or the attorney's client  
17 because the attorney has made objections.

18 Moreover, do not attempt to interpret my rulings on  
19 objections as somehow indicating to you who I believe should  
20 win or lose the case.

21 Now, I'm going to talk in these next set of  
22 instructions a little bit about evidence. There are two types  
23 of evidence which are generally presented during a trial --  
24 direct evidence and circumstantial evidence. Direct evidence  
25 is the testimony of a person who asserts or claims to have

1 actual knowledge of a fact, such as an eyewitness.

2 Circumstantial evidence is proof of a chain of facts and  
3 circumstances indicating the existence of a fact.

4 And I have a standard example I always give to juries  
5 about circumstantial evidence. You leave your home one morning  
6 in, let's say it's February. It's been cold out, but your  
7 front yard is bare. There's no snow on the ground. And you  
8 leave, let's say, at 9:00 in the morning, and you come home at  
9 1:00 in the afternoon.

10 Now, in the meantime, it has snowed, and when you  
11 come home at 1:00, there's a white blanket of snow in your  
12 front yard, and you see a footprint in that snow. You do not  
13 see a person, but you see the facts -- you have the facts I've  
14 just given you.

15 Now, you have direct evidence that it has snowed.  
16 You know what time you left the house, you know what time  
17 you've come back, you see the footprint, and you know from  
18 ordinary human experience a human being normally is associated  
19 with a footprint.

20 From those facts, you can draw the inference that  
21 there was a person in your yard sometime between nine and one,  
22 although you never saw the person. That's an example of  
23 circumstantial evidence.

24 Now, the law makes absolutely no distinction between  
25 the weight or value to be given to either direct or

1 circumstantial evidence, nor is a greater degree of certainty  
2 required of circumstantial evidence than of direct evidence.  
3 In other words, you should weigh all the evidence in the case  
4 in reaching your verdict.

5           During this trial, documents have been entered into  
6 evidence that have had words and phrases and sometimes entire  
7 paragraphs redacted or deleted. In other instances, you have  
8 seen that there have been words or phrases substituted for the  
9 original words or phrases that may appear in a document.

10           I have decided to allow substitutions and redactions  
11 in this fashion to protect national security interests. Many  
12 of the substitutions and redactions pertain to names and  
13 specific locations, and those specific names themselves are  
14 simply not relevant to the issues at hand. Sometimes I have  
15 permitted substitutions and redactions to protect sensitive and  
16 highly classified matters, most of which have nothing to do  
17 with this case.

18           I caution you that you should not consider the manner  
19 in which substitutions and redactions have been used as an  
20 expression of my opinion regarding the facts of this case. It  
21 is your job and your job alone to decide the facts of this  
22 case.

23           A number of the exhibits received in evidence contain  
24 their original classification markings, such as Secret. Except  
25 for Exhibits 142, 143, and 144, which I will address shortly,

1 all of these exhibits are now unclassified. These unclassified  
2 exhibits are public, are public record documents and do not  
3 require any special handling procedures.

4 Because Exhibits 142, 143, and 144 remain classified  
5 as Secret, and you're going to know that because they have a  
6 red cover on them when you see them in the jury room, you may  
7 not communicate the contents of these exhibits to anyone after  
8 this trial is concluded. You should draw no inference as to  
9 the guilt or innocence of the defendant from the fact that you  
10 cannot communicate anything about these exhibits.

11 Now, certain charts and summaries have been shown to  
12 you in order to help explain the facts disclosed by the books,  
13 records, and other documents which are in evidence in the case.  
14 Such charts or summaries are not in and of themselves evidence  
15 or proof of any facts. If such charts or summaries do not  
16 correctly reflect the facts or figures shown by the evidence in  
17 the case, you should disregard them.

18 In other words, such charts and summaries are used  
19 only as a matter of convenience. So if, and to the extent that  
20 you find they are not in truth summaries of facts or figures  
21 shown by the evidence in the case, you are to disregard them  
22 entirely.

23 The next group of instructions talk about witnesses  
24 and how you go about approaching and evaluating witnesses, and  
25 this next instruction also addresses evidence.

1           In evaluating the evidence, always consider the  
2           quality of the evidence over the quantity. You are not bound  
3           to decide any issue of fact in accordance with the testimony of  
4           any number of witnesses which does not produce in your minds  
5           belief in the likelihood of truth, as against the testimony of  
6           a lesser number of witnesses or other evidence which does  
7           produce such belief in your minds. In other words, the test is  
8           not which side brings the greater number of witnesses or  
9           presents the greater quantity of evidence but which witness and  
10          which evidence appeals to your minds as being most accurate and  
11          otherwise trustworthy.

12           The testimony of one witness or just a few witnesses  
13          in whom you have complete confidence may outweigh the testimony  
14          of several witnesses in whom you do not have such confidence.  
15          Similarly, one or two exhibits which you find compelling may  
16          outweigh numerous exhibits which you find less compelling. So  
17          it is the quality of the evidence, not the quantity of the  
18          evidence, that you should be concerned with.

19           Now, you as jurors are the sole and exclusive judges  
20          of the credibility of each of the witnesses called to testify.  
21          Only you determine -- excuse me -- only you determine the  
22          importance or the weight that their testimony deserves. After  
23          evaluating the credibility of a witness, you may decide to  
24          believe all of that witness's testimony, only a portion of it,  
25          or none of it at all.



1           In evaluating a witness's credibility, you should  
2 carefully consider all of the testimony given, the  
3 circumstances under which each witness has testified, and every  
4 matter in evidence which tends to show whether a witness in  
5 your opinion is worthy of belief. Consider each witness's  
6 intelligence, motive to falsify, state of mind, and appearance  
7 and manner while on the witness stand. Consider the witness's  
8 ability to observe the matters as to which he or she has  
9 testified, and consider whether the witness impresses you as  
10 having an accurate memory or recollection of these matters.  
11 Consider also any relation a witness may bear to either side of  
12 the case, the manner in which each witness might be affected by  
13 your verdict, and the extent to which, if at all, each witness  
14 is either supported or contradicted by other evidence in the  
15 case.

16           Inconsistencies or discrepancies in the testimony of  
17 a witness or between the testimony of different witnesses may  
18 or may not cause you to disbelieve or discredit such testimony.  
19 Two or more persons witnessing an incident may simply see or  
20 hear it differently. Innocent mistakes in remembering  
21 something is not an uncommon human experience. In evaluating  
22 the effect of a discrepancy, however, always consider whether  
23 it pertains to a matter of importance or to an insignificant  
24 detail, and consider whether the discrepancy results from  
25 innocent error or from intentional falsehood.

1           After making your own judgment concerning the  
2 believability of a witness, you can then attach such importance  
3 or weight to that testimony, if any, that you feel it deserves.

4           The rules of evidence ordinarily do not permit  
5 witnesses to testify as to opinions or conclusions. An  
6 exception to this rule exists as to those whom we call expert  
7 witnesses. Witnesses who by education and experience have  
8 become expert in some art, science, profession, or calling may  
9 state their opinions as to relevant and material matters in  
10 which they profess to be expert and may also state their  
11 reasons for the opinions.

12           You should consider each expert opinion received in  
13 evidence and give it such weight as you think it deserves. If  
14 you should decide that the opinion of an expert witness is not  
15 based upon sufficient education and experience or if you should  
16 conclude that the reason given in support of the opinion --  
17 reasons given in support of the opinion are not sound, or if  
18 you feel that it is outweighed by other evidence, you may  
19 disregard the opinion entirely.

20           A witness may be discredited -- and the technical  
21 term is "impeached" -- by contradictory evidence or by evidence  
22 that at some other time, the witness has said or done something  
23 or has failed to say or do something that is inconsistent with  
24 the witness's present testimony.

25           If you believe any witness has been impeached and

1 thus discredited, it is your exclusive province to give the  
2 testimony of that witness such credibility, if any, as you may  
3 think it deserves.

4           If a witness is shown knowingly to have testified  
5 falsely concerning any material matter, you have a right to  
6 distrust such witness's testimony in other particulars, and you  
7 may reject all the testimony of that witness or give it such  
8 credibility as you may think it deserves.

9           An act or omission is knowingly done if voluntarily  
10 and intentionally done and not done because of a mistake or  
11 accident or other innocent reason.

12           Now, during the trial of this case, the testimony of  
13 Mr. Merlin was presented to you by way of video deposition  
14 which consisted of sworn recorded answers to questions asked of  
15 the witness in advance of the trial by the attorneys for the  
16 parties to the case. The testimony of a witness who for some  
17 reason cannot be present to testify from the witness stand may  
18 be presented through a video recording played on a television  
19 set. Such testimony is entitled to the same consideration and  
20 is to be judged as to credibility and weighed and otherwise  
21 considered by the jury insofar as possible in the same way as  
22 if the witness had been physically present in the courtroom and  
23 had testified from the witness stand.

24           During this trial, you heard testimony from witnesses  
25 who are currently employed by the Central Intelligence Agency.

1 You also heard testimony from former employees of the Central  
2 Intelligence Agency, some of whom continue to work for the  
3 agency as contractors, and you heard the testimony of Human  
4 Asset No. 1 by video deposition and that of his wife. These  
5 witnesses testified either by using only initials or using a  
6 made-up name -- Merlin, that's a made-up name -- if you were  
7 not told their true names. These witnesses also testified with  
8 a screen preventing the general public from seeing them.

9 The disclosure of the witnesses' names and their  
10 physical identity could potentially compromise either their  
11 continued work for the CIA or expose them to safety issues.

12 As I have explained to you, one of your roles as  
13 jurors will be to assess the credibility of each witness who  
14 has testified during this trial. You should not make any  
15 judgments about the credibility of those witnesses simply  
16 because you do not know their full names or because they  
17 testified with the screen. Moreover, you should not consider  
18 the manner in which such witnesses testified as an expression  
19 of my opinion as to any of the facts of this case. Again, it  
20 is your job and your job alone to decide the facts of this  
21 case.

22 The defendant in a criminal case has an absolute  
23 right under our Constitution not to testify. The fact that the  
24 defendant, Jeffrey Alexander Sterling, did not testify must not  
25 be discussed or considered by the jury in any way when

1 deliberating and in arriving at your verdict. No inference of  
2 any kind may be drawn from the fact that a defendant decided to  
3 exercise his privilege under the Constitution and did not  
4 testify.

5 As I stated earlier, the law never imposes upon a  
6 defendant in a criminal case the burden or duty of calling any  
7 witnesses or of producing any evidence.

8 Now, the next series of instructions are going to  
9 talk about the indictment, which is the document used to bring  
10 the charges, and then the specific charges involved in this  
11 case, and we'll also be giving you some definitions of some of  
12 the terms that are involved in those charges.

13 An indictment is a formal method used by the  
14 government to accuse a person of a crime. It is not evidence  
15 of any kind against a person. Mr. Sterling is presumed to be  
16 innocent of the crimes charged. Even though the indictment has  
17 been returned against Mr. Sterling, he begins this trial with  
18 absolutely no evidence against him.

19 Mr. Sterling has pleaded not guilty to all the  
20 charges in this indictment and therefore denies that he is  
21 guilty of the charges.

22 A separate crime is alleged against the defendant in  
23 each count of the indictment. Each alleged offense and any  
24 evidence pertaining to it should be considered separately by  
25 the jury. The fact that you find the defendant guilty or not

1 guilty of one of the offenses charged should not control your  
2 verdict as to any other offense charged against the defendant.

3 In other words, you must give separate and individual  
4 consideration to each charge against the defendant.

5 The indictment charges that the alleged offenses were  
6 committed between on or about certain dates. Although it is  
7 necessary for the government to prove beyond a reasonable doubt  
8 that each offense was committed on a date reasonably near the  
9 date or dates alleged in the specific count being considered,  
10 it is not necessary for the government to prove that each  
11 offense was committed precisely on the dates charged.

12 The defendant is not on trial for any act or any  
13 conduct not specifically charged in the indictment.

14 Now, the government has introduced evidence that  
15 defendant had classified documents, and these are Exhibits 142  
16 through 145, in his custody when his residence was searched.  
17 Evidence that an act was done by the defendant at some other  
18 time is not, of course, any evidence or proof whatever that at  
19 another time, the defendant performed a similar act, including  
20 the offenses charged in this indictment.

21 Evidence of a similar act may not be considered by  
22 the jury in determining whether the defendant actually  
23 performed the physical acts charged in this indictment. Nor  
24 may such evidence be considered for any other purpose  
25 whatsoever unless the jury first finds beyond a reasonable

1 doubt from other evidence in the case standing alone that the  
2 defendant did the acts charged in the indictment.

3 If the jury should find beyond a reasonable doubt  
4 from other evidence in the case that the defendant did the act  
5 or acts alleged in the particular count under consideration,  
6 the jury may then consider evidence as to an alleged earlier  
7 act of a like nature in determining the state of mind or intent  
8 with which the defendant actually did the act or acts charged  
9 in that particular count.

10 As previously stated, the defendant is not on trial  
11 for any acts not alleged in the indictment. Nor may a  
12 defendant be convicted of the crimes charged even if you were  
13 to find that he committed other acts, even acts similar to the  
14 one charged in this indictment.

15 Now, the defendant has been charged in the indictment  
16 with knowingly and willfully communicating national defense  
17 information to another not entitled to receive such information  
18 while being in lawful possession of such information. Count 1  
19 charges specifically that the defendant caused national defense  
20 information, namely, information about Classified Program No. 1  
21 and Human Asset No. 1, to be communicated, delivered, and  
22 transmitted to any person of the general public not entitled to  
23 receive this information, including foreign adversaries,  
24 through the publication, distribution, and delivery of *State of*  
25 *War* into the Eastern District of Virginia in approximately late

1 December and early January of 2006.

2 It's further alleged in Count 1 that the defendant  
3 did so while having reason to believe that this national  
4 defense information could be used to the injury of the United  
5 States or to the advantage of any foreign nation.

6 Count 4 charges that the defendant communicated,  
7 delivered, and transmitted national defense information,  
8 namely, information about Classified Program No. 1 and Human  
9 Asset No. 1, directly and indirectly to James Risen, a person  
10 of the general public not entitled to receive this information,  
11 between February 12 and April 30 of 2003. It's further alleged  
12 that the defendant did so while having reason to believe that  
13 this national defense information could be used to the injury  
14 of the United States or to the advantage of any foreign nation.

15 Finally, Count 6 charges that the defendant attempted  
16 to communicate, deliver, and transmit national defense  
17 information, namely, information about Classified Program No. 1  
18 and Human Asset No. 1, to any person of the general public not  
19 entitled to receive this information, including foreign  
20 adversaries, through the publication, distribution, and  
21 delivery of a *New York Times* article in the Eastern District of  
22 Virginia between February 27, 2003, and April 30, 2003. And  
23 it's further alleged that the defendant did so while having  
24 reason to believe that this national defense information could  
25 be used to the injury of the United States or to the advantage



1 of any foreign nation.

2 Now, the statute defining the offenses charged -- the  
3 offense charged in Counts 1, 4, and 6 is Title 18 of the United  
4 States Code, Section 793(d), and that code provides in part:

5 Whoever, lawfully having possession of, access to,  
6 control over, or being entrusted with any document,  
7 writing, . . . , or note relating to the national defense, or  
8 information relating to the national defense which information  
9 the possessor has reason to believe could be used to the injury  
10 of the United States or to the advantage of any foreign nation,  
11 willfully communicates, delivers, transmits, or causes to be  
12 communicated, delivered, or transmitted . . . the same to any  
13 person not entitled to receive it . . . shall be guilty of an  
14 offense against the United States.

15 The defendant -- and I'm going to now talk about  
16 Counts 2, 5, and 7. The defendant has been charged in the  
17 indictment with knowingly and willfully disclosing -- I'm  
18 sorry, communicating national defense information to another  
19 not entitled to receive said information while not being in  
20 lawful possession of this information.

21 Count 2 charges that the defendant caused national  
22 defense information, namely, a letter relating to Classified  
23 Program No. 1, to be communicated, delivered, and transmitted  
24 to any person of the general public not entitled to receive  
25 this information, including foreign adversaries, through the

1 publication, distribution, and delivery of *State of War* into  
2 the Eastern District of Virginia in approximately late December  
3 and early January 2006. The defendant did so while having  
4 reason to believe that this national defense information -- I'm  
5 sorry, it's alleged that the defendant did so while having  
6 reason to believe that this national defense information could  
7 be used to the injury of the United States or to the advantage  
8 of any foreign nation.

9 Count 5 charges that the defendant communicated,  
10 delivered, and transmitted national defense information,  
11 namely, a letter relating to Classified Program No. 1, directly  
12 and indirectly to James Risen, a person of the general public  
13 not entitled to receive this information, between February 12,  
14 2003, and April 30, 2003. And it's further alleged that the  
15 defendant did so while having reason to believe that this  
16 national defense information could be used to the injury of the  
17 United States or to the advantage of any foreign nation.

18 Finally, Count 7 charges that the defendant attempted  
19 to communicate, deliver, and transmit national defense  
20 information, namely, a letter about Classified Program No. 1,  
21 to any person of the general public not entitled to receive  
22 this information, including foreign adversaries, through the  
23 publication, distribution, and delivery of a *New York Times*  
24 article in the Eastern District of Virginia between February 27  
25 and April 30 of 2003. And it's further alleged that the

1 defendant did so while having reason to believe that this  
2 national defense information could be used to the injury of the  
3 United States or to the advantage of any foreign nation.

4           Now, Counts 2, 5, and 7 involve a different  
5 subsection of Section 793 of Title 18 of the United States  
6 Code, and (e) provides in relevant part that: Whoever,  
7 unlawfully having possession of, access to, control over, or  
8 being entrusted with any document, writing, . . . , or note  
9 relating to the national defense, or information relating to  
10 the national defense which information the possessor has reason  
11 to believe could be used to the injury of the United States or  
12 to the advantage of any foreign nation, willfully communicates,  
13 delivers, transmits, or causes to be communicated, delivered,  
14 or transmitted . . . the same to any person not entitled to  
15 receive it . . . shall be guilty of an offense against the  
16 United States.

17           Now, every crime has what are called elements. These  
18 are actually the essential components of that crime, and in a  
19 criminal case, in order for a person to be found guilty of a  
20 particular crime, the government must produce enough evidence  
21 to establish each and every element beyond a reasonable doubt.  
22 So if you have a crime with four elements and you're satisfied  
23 the government has proven three of those four elements beyond a  
24 reasonable doubt but not the fourth element, the government has  
25 not met its burden, and you would have to acquit the defendant

1 for that particular count.

2 So in order to meet its burden of proof on Counts 1,  
3 2, and 4 through 7, that is, the counts I've just summarized  
4 for you, the government must prove beyond a reasonable doubt  
5 the following elements:

6 First, for Counts 1, 4, and 6, that the defendant  
7 lawfully had possession of, access to, control over, or was  
8 entrusted with intangible or oral information relating to the  
9 national defense.

10 For Counts 2, 5, and 7, the first element is that the  
11 defendant had unauthorized possession of, access to, control  
12 over, or was entrusted with a document, writing, or note  
13 relating to the national defense.

14 So the first element is different for Counts 1, 4,  
15 and 6. It's one first element. There's a different first  
16 element for Counts 2, 5, and 7. But the second, third, and  
17 fourth elements for these offenses are the same.

18 The second element -- this applies then to all of  
19 those counts -- is that the defendant had reason to believe  
20 that this national defense information could be used to the  
21 injury of the United States or to the advantage of any foreign  
22 nation.

23 The third element that's common to all of those  
24 counts is that the defendant willfully communicated, delivered,  
25 transmitted, or caused to be communicated, delivered, or

1 transmitted this national defense information.

2 And the fourth element common to all of those counts  
3 is that the defendant did so to a person not entitled to  
4 receive it. A person is not entitled to receive classified  
5 information if he did not hold a security clearance or if he  
6 holds a security clearance but has no need to know the  
7 information.

8 Now, the word "possess" means to own or to exert  
9 control over something. The word "possession" can take on  
10 several different but related meanings.

11 The law recognizes two kinds of possession -- actual  
12 possession and constructive possession. A person who knowingly  
13 has direct physical control over a thing at a given time is in  
14 actual possession of it. The example is I'm holding this blue  
15 pen in my hand. I have actual, physical possession of this  
16 blue pen.

17 Now, a person who although not in actual possession,  
18 knowingly has both the power and intention at a given time to  
19 exercise dominion or control over a thing, either directly or  
20 through another person or persons, is said to have constructive  
21 possession of it. My courtroom deputy, Ms. Guyton, sitting  
22 right here, works for me. She's got the computer. If I direct  
23 her to send an e-mail message to my secretary, I at that time  
24 have constructive possession of that computer because I'm in  
25 the position to control how it's being used.

1 Now, you may find that the element of possession as  
2 that term is used in these instructions is present if you find  
3 beyond a reasonable doubt that the defendant had actual or  
4 constructive possession of the thing at issue.

5 For Counts 1, 4, and 6, I'm now going to define two  
6 key terms: "lawful possession" and "unlawful possession,"  
7 because that's what differentiates that first element for these  
8 counts. So for Counts 1, 4, and 6, a person has lawful  
9 possession of something if he is entitled to have it. In this  
10 case, lawful possession of classified information means  
11 possession of classified information by a person who held an  
12 appropriate security clearance and had a need to know at the  
13 time the person acquired the classified information.

14 For Counts 2, 5, and 7, a person has unauthorized  
15 possession of something if he is not entitled to have it. In  
16 this case, unauthorized possession of classified information,  
17 namely, a letter related to Classified Program No. 1, means  
18 possession of classified information by a person who does not  
19 hold a security clearance or by a person who holds a security  
20 clearance without the need to know, or by a person who holds a  
21 security clearance, has a need to know, but removed the  
22 classified information from the official premise without  
23 authorization.

24 The term "need to know" means a determination made by  
25 an authorized holder of classified information that a

1 prospective recipient requires access to specific classified  
2 information in order to perform or assist in a lawful and  
3 authorized government function.

4           For those first six counts, that is, for Counts 1, 2,  
5 and 4 through 7, the term "information relating to the national  
6 defense" broadly refers to all matters that directly or may  
7 reasonably be connected with the national defense of the United  
8 States against any of its enemies, including matters relating  
9 to the nation's intelligence capabilities.

10           The term "national defense" is a generic concept of  
11 broad connotation referring not only to military, naval, and  
12 air establishments, but also to all related activities of  
13 national defense preparedness. National defense information  
14 can be oral or intangible information.

15           To prove that documents, writings, or intangible  
16 information relate to the national defense, there are two  
17 things that the government must prove. First, it must prove  
18 that the disclosure of the material would be potentially  
19 damaging to the United States or might be useful to an enemy of  
20 the United States. Second, it must prove that the material is  
21 closely held by the United States government.

22           The disclosure of the information relating to the  
23 national defense need not cause actual damage or harm to the  
24 United States. Instead, potential damage or harm to the United  
25 States is sufficient to establish this prong of the essential

1 element.

2 In determining whether material is closely held, you  
3 may consider whether it has been classified by appropriate  
4 authorities and whether it remained classified on the date or  
5 dates pertinent to the indictment. Where the indictment has  
6 been made public by the United -- I'm sorry, where the  
7 information has been made public by the United States  
8 government and is found in sources lawfully available to the  
9 general public, it does not relate to the national defense.  
10 Similarly, where the sources of information are lawfully  
11 available to the public and the United States government has  
12 made no effort to guard such information, the information  
13 itself does not relate to the national defense.

14 In deciding this issue, you should examine the  
15 information and also consider the testimony of witnesses who  
16 testified as to the content and significance of the information  
17 and who described the purpose and the use to which the  
18 information contained therein could be put.

19 During the trial, you may have heard the attorneys  
20 refer to certain evidence or materials as classified  
21 information or that certain information was classified.  
22 Classified information is information that has been determined  
23 pursuant to a system established by the Executive Branch to  
24 require protection against unauthorized disclosure.

25 As I have previously instructed you, when considering



1 Counts 1, 2, and 4 through 7, you are to determine whether  
2 certain information in this case was national defense  
3 information. That is not the same as classified information.  
4 However, you may consider the fact that information was  
5 classified in determining whether the information at issue was  
6 national defense information.

7 For Counts 1, 2, and 4 through 7, the phrase "with  
8 reason to believe that it could be used to the injury of the  
9 United States or to the advantage of a foreign nation" means  
10 that the defendant knew facts from which he concluded or  
11 reasonably should have concluded that the documents, writings,  
12 or intangible information relating to the national defense  
13 could be used for the prohibited purposes. In considering  
14 whether or not the defendant acted with the intent or having  
15 reason to believe that the material could be used to the injury  
16 of the United States or to the advantage of a foreign country,  
17 you may consider the nature of the documents or information  
18 involved.

19 The government does not have to prove that the  
20 documents or information could be used both to injure the  
21 United States and to the advantage of a foreign country. The  
22 statute reads in the alternative, so proof of either will  
23 suffice.

24 If a defendant willfully causes an act to be done by  
25 another, the defendant is responsible for those acts as though

1 he personally committed them. To establish that the defendant  
2 caused an act to be done, the government must prove beyond a  
3 reasonable doubt:

4 First, that another person performed the acts that  
5 constituted the crime of unauthorized communication of national  
6 defense information or committed an indispensable element of  
7 that crime; and

8 Two, that the defendant willfully caused these acts  
9 even though he did not personally commit these acts.

10 The government need not prove that the person who  
11 performed the acts that constituted the crime of unauthorized  
12 communication of national defense information did so with  
13 criminal intent. That person may be an innocent intermediary  
14 or pawn.

15 The defendant need not perform acts that constitute  
16 the crime of unauthorized communication of national defense  
17 information, be present when it was performed, or be aware of  
18 the details of its execution to be guilty of causing an act to  
19 be done by another. However, a general suspicion that a lawful  
20 act may occur or that something criminal is happening is not  
21 enough. Mere knowledge that the unauthorized communication of  
22 national defense information is being committed without more is  
23 also not sufficient to establish causing an act to be done  
24 through another.

25 As I have instructed you, an act is done willfully if

1 done voluntarily and intentionally with the intent that  
2 something the law forbids be done, that is to say, with bad  
3 purpose, either to disobey or disregard the law.

4 For Counts 1, 2, and 4 through 7, an act is done  
5 willfully -- and I'm just going to repeat this because it comes  
6 through all the instructions -- if it is done voluntarily and  
7 intentionally and with the specific intent to do something the  
8 law forbids, that is, with a purpose to disobey the law.

9 Now, for Counts 1, 2, and 4 through 7, the government  
10 must prove beyond a reasonable doubt each and every element of  
11 these offenses as I have explained them to you. The  
12 government, however, does not have to prove that the defendant  
13 was the only person who communicated the national defense  
14 information alleged in the indictment. Your duty as jurors is  
15 limited to determining whether the government has proved beyond  
16 a reasonable doubt that the defendant committed the offenses  
17 charged, irrespective of whether other persons may have  
18 communicated the same or similar information.

19 Now, we're moving on to Count 3. The defendant has  
20 been charged in Count 3 of the indictment with knowingly and  
21 willfully retaining national defense information while having  
22 unauthorized possession of that information.

23 Count 3 charges specifically that the defendant  
24 unlawfully retained a document relating to the national  
25 defense, namely, a letter relating to Classified Program No. 1,

1 at his residence beginning in or about January 31, 2002, and  
2 continuing through approximately April 30 of 2003.

3 The statute, and this is another section of 793 -- of  
4 Title 18, United States Code, 793(a) -- (e), 793(e), provides  
5 that: Whoever having unauthorized possession of . . . any  
6 document . . . relating to the national defense . . . willfully  
7 retains the same and fails to deliver it to the office or  
8 employee of the United States entitled to receive it . . .  
9 shall be guilty of an offense against the United States.

10 And for this offense, for Count 3, there are two  
11 essential elements:

12 First, that beginning in or about January 31 of  
13 2012 -- that's 2002; that's a typo -- and continuing thereafter  
14 through on or about April 20 of 2003, the defendant had  
15 unauthorized possession or control over a document relating to  
16 the national defense of the United States; and

17 Two, that the defendant willfully retained the same  
18 document and failed to deliver the document to an officer or an  
19 employee of the United States who was entitled to receive it.

20 The first element the government must prove for this  
21 defense is that the defendant had unauthorized possession of or  
22 control over information that relates to the national defense.  
23 The definitions I previously provided you with respect to  
24 unauthorized possession and information relating to the  
25 national defense apply equally to this count.

1           The second element the government must prove beyond a  
2 reasonable doubt is that the defendant willfully retained the  
3 document in question and failed to deliver it to an officer or  
4 employee of the United States authorized to receive the  
5 document.

6           As I've instructed you already, an act is done  
7 willfully if it is done voluntarily and intentionally and with  
8 the specific intent to do something the law forbids, that is,  
9 with a bad purpose either to disobey or disregard the law.  
10 Unlike the intent element for Counts 1, 2, and 4 through 7, for  
11 Count 3, the government does not have to prove that the  
12 defendant acted with the intent or reason to believe that his  
13 retention of the document could be used to the injury of the  
14 United States or to the advantage of any foreign nation.  
15 Instead, the government only must prove that the defendant  
16 acted willfully as defined above.

17           Now, Count 9 of the indictment charges that between  
18 on or about December 24, 2005, and on or about January 5, 2006,  
19 the defendant caused to be conveyed without authority property  
20 of the United States, namely, classified information about  
21 Classified Program No. 1, which had a value of more than  
22 \$1,000, and came into the defendant's possession by virtue of  
23 his employment with the Central Intelligence Agency, to any  
24 member of the general public not entitled to receive said  
25 information, including foreign adversaries, through the

1 publication, distribution, and delivery of the *State of War* for  
2 retail sale in the Eastern District of Virginia.

3 Title 18 of the United States Code, Section 641,  
4 provides: Whoever . . . without authority sells, conveys, or  
5 disposes of any record, voucher, money, or thing of value of  
6 the United States or of any department or agency thereof, or  
7 any property made or being made under control for the United  
8 States or any department or agency thereof . . . shall be  
9 guilty of an offense against the United States.

10 And there are four essential elements for this  
11 offense. Again, the government must prove each and every one  
12 of these beyond a reasonable doubt:

13 First, that the defendant conveyed a thing of value  
14 of the United States;

15 Second, that the defendant did not have the legal  
16 authority to do so;

17 Third, that the thing of value referred to in the  
18 indictment was of a value greater than \$1,000; and

19 Four, that the defendant acted knowingly.

20 The word "convey" means to transfer or deliver or  
21 caused to be transferred or delivered to another. The  
22 term "without authority" means without actual permission from  
23 someone who has the legal capacity to give permission.

24 The term "value" can mean face value, par value,  
25 market value, or cost price, either wholesale or retail,

1   whichever is greater. A thing of value can be any thing,  
2   including oral information or intangible property, that has  
3   value.

4           An individual acts knowingly if he was conscious and  
5   aware of his actions, realized what he was doing or what was  
6   happening around him, and did not act because of ignorance,  
7   mistake, or accident. Thus, if the defendant acted in good  
8   faith, he cannot be guilty of the crime. The burden to prove  
9   intent, as with all other elements of the crime, rests with the  
10   government.

11           Intent or knowledge may not ordinarily be proven  
12   directly because there's no way of directly scrutinizing the  
13   workings of the human mind. In determining what the defendant  
14   knew or intended at a particular time, you may consider any  
15   statements made or acts done or omitted by the defendant and  
16   all other facts and circumstances received in evidence that may  
17   aid in your determination of the defendant's knowledge or  
18   intent. You may infer, but you certainly are not required to  
19   infer, that a person intends the natural and probable  
20   consequences of acts knowingly done or knowingly omitted. It  
21   is entirely up to you, however, to decide what facts are proven  
22   by the evidence received during this trial.

23           Intent and motive are different concepts and should  
24   not be confused. Motive is what prompts a person to act or  
25   fail to act. Intent refers only to the state of mind with

1 which the act is done or omitted.

2           Good motive alone is never a defense where the act  
3 done or omitted is a crime. The motive of the defendant is  
4 therefore immaterial except insofar as evidence of motive may  
5 aid in the determination of state of mind or the intent of the  
6 defendant.

7           This is now the last count that you have to consider:  
8 Count 10 of the indictment charges that the defendant knowingly  
9 and corruptly destroyed the March 10, 2003, e-mail from himself  
10 to James Risen that had a link to a CNN article about the  
11 Iranian nuclear weapons program. The defendant is alleged to  
12 have deleted this e-mail from his e-mail account with the  
13 intent to impair the e-mail's integrity and availability for  
14 use in an investigation before a federal grand jury empaneled  
15 in the Eastern District of Virginia between approximately April  
16 18, 2006, and July 28, 2006.

17           Title 10 involves a violation of section 1512(c) of  
18 Title 18 of the United States Code, which provides in part:  
19 Whoever corruptly alters, destroys, mutilates, or conceals a  
20 record, document, or other object, or attempts to do so with  
21 the intent to impair the object's integrity or availability for  
22 use in an official proceeding; or otherwise obstructs,  
23 influences, or impedes any official proceeding, or attempts to  
24 do so, shall be guilty of an offense against the United States.

25           There are three essential elements, again, all of



1 which must be proven beyond a reasonable doubt in order for  
2 there to be a conviction on Count 10.

3 First is that the defendant altered, destroyed,  
4 mutilated, or concealed a record, document, or other object, or  
5 attempted to do so, or otherwise obstructed, influenced, or  
6 impeded an official proceeding;

7 Two, that the defendant did so with the intent to  
8 impair the object's integrity or availability for use in an  
9 official proceeding; and

10 Third, that the defendant did so corruptly.

11 The document destroyed need not, need not be material  
12 to the official proceeding.

13 An "official proceeding" means any proceeding,  
14 including an investigation before a federal grand jury.

15 To act "corruptly" as that word is used in these  
16 instructions means to act voluntarily and deliberately and for  
17 the purpose of improperly influencing, or improperly  
18 obstructing, or improperly interfering with the administration  
19 of justice. The defendant's conduct must have the natural and  
20 probable effect of interfering with the due administration of  
21 justice. The government, however, does not have to prove that  
22 the act of obstruction in fact obstructed the official  
23 proceeding or was successful.

24 In addition to the elements of the specific charges  
25 which the government must prove beyond a reasonable doubt, as

1 to each charge, the government must also establish the venue of  
2 that charge in the Eastern District of Virginia because a  
3 defendant has a right to be tried in the district where the  
4 offense was committed.

5           Although, although the government has the burden to  
6 prove venue, it is not required to prove venue beyond a  
7 reasonable doubt. Rather, the government must establish venue  
8 by a preponderance of the evidence, which is a lower standard  
9 of proof and requires that it is more likely than not that at  
10 least one act in furtherance of that offense occurred in the  
11 Eastern District of Virginia. The government must establish  
12 venue as to each charged offense.

13           If the government fails to establish venue for a  
14 particular charge, the jury must acquit the defendant of that  
15 charge.

16           I instruct you that you must presume the defendant to  
17 be innocent of the crimes charged. Thus, the defendant,  
18 although accused of crimes in the indictment, begins the trial  
19 with a clean slate, that is, with no evidence against him. The  
20 indictment, as you already know, is not evidence of any kind.  
21 The defendant is, of course, not on trial for any act or crime  
22 not contained in the indictment. The law permits nothing but  
23 legal evidence presented before the jury in court to be  
24 considered in support of any charge against the defendant, and  
25 the presumption of innocence alone therefore is sufficient to

1 acquit the defendant.

2           The burden is always upon the prosecution to prove  
3 guilt beyond a reasonable doubt. That burden never shifts to  
4 the defendant for the law never imposes upon a defendant in a  
5 criminal case the burden or duty of calling any witnesses or  
6 producing any evidence. The defendant is not even obligated to  
7 produce any evidence by cross-examining the witnesses for the  
8 government.

9           It is not required that the government prove guilt  
10 beyond all possible doubt. The test is one of reasonable  
11 doubt. And I can't give you a definition for that term. Those  
12 are not technical legal terms. English language.

13           Unless the government proves beyond a reasonable  
14 doubt that the defendant has committed each and every element  
15 of the offenses charged in the indictment, you must find the  
16 defendant not guilty of the offenses. If the jury views the  
17 evidence in the case as reasonably permitting either of two  
18 conclusions, one of innocence and one of guilt, the jury must,  
19 of course, adopt the conclusion of innocence.

20           Now, this is the last instruction, and I know you've  
21 been with this for almost an hour. Upon retiring to the jury  
22 room to begin your deliberations, you will elect one of your  
23 members to act as your foreperson. The foreperson will preside  
24 over your deliberations, will be your spokesperson here in  
25 court, and will sign the verdict form on your behalf.

1           Your verdict must represent the collective judgment  
2 of the jury. In order to return a verdict, it is necessary  
3 that each juror agree to it. That is what unanimity means. In  
4 other words, your verdict must be unanimous.

5           It is your duty as jurors to consult with one another  
6 and to deliberate with one another with a view towards reaching  
7 an agreement if you can do so without violence to your  
8 individual judgment. Each of you must decide the case for  
9 yourself, but do so only after an impartial consideration of  
10 all the evidence in the case with all the other jurors. In the  
11 course of your deliberations, do not hesitate to reexamine your  
12 own views and to change your opinion if convinced it is  
13 erroneous. Do not surrender your honest conviction, however,  
14 solely because of the opinion of the other jurors or for the  
15 mere purpose of returning a verdict.

16           Remember at all times you are not partisans. You  
17 don't represent the government; you don't represent the  
18 defendant. Instead, you are judges, specifically, judges of  
19 the facts of this case. And your sole interest is to seek the  
20 truth from the evidence received during the trial.

21           Your verdict must be based solely upon the evidence  
22 received in the case. Nothing you have seen or read outside of  
23 court may be considered. Nothing that I have said or done  
24 during the course of this trial is intended in any way to  
25 somehow suggest to you what I think your verdict should be.

1           The punishment provided by law for the offenses  
2 charged in the indictment is a matter exclusively within the  
3 province of the Court and should never be considered by the  
4 jury in any way in arriving at an impartial verdict as to the  
5 offenses charged.

6           Nothing said in these instructions and nothing in the  
7 verdict form prepared for your convenience is to suggest or  
8 convey to you in any way or manner any intimation as to what  
9 verdict I think you should return. What the verdict shall be  
10 is the exclusive duty and responsibility of the jury. As I've  
11 told you many times before, you are the sole judges of the  
12 facts.

13           Now, a verdict form has been prepared for your  
14 convenience, and you will notice that it skips from Count 7 to  
15 Count 9. There is no Count 8 at issue in this case, so don't  
16 worry about the missed number.

17           You will take this verdict form to the jury room, and  
18 when you have reached your unanimous agreement as to your  
19 verdict, the foreperson will write your verdict, date and sign  
20 the form, and return with your verdict to the courtroom.

21           Let me go over the verdict form with you right now.  
22 So it begins with the caption of the case, United States of  
23 America v. Jeffrey Alexander Sterling, and it has the case  
24 number, and then we've listed each count.

25           Count 1 -- and you can go back to the jury

1 instructions and find exactly what that count is referring to.  
2 And it just says: "With respect to Count 1, unauthorized  
3 disclosure of national defense information," and then it has  
4 the code section, "we, the jury, unanimously find the  
5 defendant, Jeffrey Alexander Sterling," and there are two  
6 choices: Guilty/Not Guilty. "G" comes before "N," so the fact  
7 that Guilty is listed first in no respect suggests that that  
8 should be your answer, but we have to put the thing someplace,  
9 and alphabetical seems as easy as any other way of doing it.

10 And then we go through each count that way, so then  
11 there's a separate line for Count 2. Each one of these counts  
12 gets an individual evaluation and individual decision, and  
13 again, any decision as to any count must be unanimous.

14 At the very end then, the foreperson will date the  
15 verdict form with the date the decision, the final decision is  
16 made. We'll ask the foreperson to sign his or her name and  
17 then please print it underneath since we often can't read your  
18 signatures.

19 Now, you will take this verdict form into the jury  
20 room. You will also have all of the physical exhibits that  
21 were entered into evidence, and I asked the attorneys to  
22 provide you with an index of those, so you'll have the exhibit  
23 number and a little title of what the exhibit is to help you  
24 find them because you have a lot of evidence in this case.

25 I will also, I have to correct a few typos, but I

1 will have for you a couple of copies of these written jury  
2 instructions as well so you can refresh yourselves as to any  
3 matter that we've talked about in these instructions. You may  
4 take your notebooks with you as well.

5 If it becomes necessary during your deliberations to  
6 communicate with the Court, you may send a note signed and  
7 dated by your foreperson or by any of the other members of the  
8 jury, and you do that by knocking on the door and giving the  
9 note folded over to Mr. Wood, my court security officer. Of  
10 course, he is forbidden to communicate in any way or manner  
11 with any member of the jury on any subject touching the merits  
12 of the case.

13 No member of the jury should ever attempt to  
14 communicate with the Court by any means other than a signed  
15 writing, and the Court will never communicate with any member  
16 of the jury on any subject touching the merits of the case  
17 other than via writing or orally here in court.

18 Also, please bear in mind that you are never to  
19 reveal to any person, not even the Court, how the jury stands  
20 numerically or otherwise on any issue until after you've  
21 reached the unanimous verdict.

22 All right, counsel, approach the bench.

23 (Bench conference on the record.)

24 THE COURT: All right, you may have noticed as I read  
25 I'm going to switch the word "communicate" on two of those

1 instructions. That's how I read them. They're just typed  
2 wrong, okay, for those counts. Because we were using the word  
3 "communicate" rather than "disclose."

4 MR. OLSHAN: That's fine.

5 THE COURT: Any objection from the government to the  
6 charge that's just been given to the jury?

7 MR. OLSHAN: No, Your Honor.

8 MR. TRUMP: No.

9 THE COURT: Are there any changes, corrections,  
10 anything you want the Court to change?

11 MR. OLSHAN: No.

12 THE COURT: No?

13 How about the defense? Other than the objections  
14 you've already put on the record, are there any additional  
15 objections to the charge other than what you've already  
16 objected to?

17 MR. MAC MAHON: No, Your Honor.

18 THE COURT: Are there any additional things you want  
19 me to tell the jury?

20 MR. MAC MAHON: No, Your Honor.

21 THE COURT: We're set to go then, right?

22 MR. MAC MAHON: We have to get rid of two jurors.

23 THE COURT: I know. We have to do the alternates.  
24 That's the next thing, okay. The practice here is that  
25 Ms. Guyton should have all 14 jurors' names in the box. Are



1 you ready to do it?

2 Is everyone watching? All right.

3 No, you do it.

4 All right, who is that? All right, the first one is  
5 David Harrison, Juror No. 42, all right? So he's the alternate  
6 No. 1. And the second one is Suzanne Yerks, Juror No. 101.  
7 She's No. 2. All right?

8 Why don't you go back, and I'll excuse them.

9 MR. MAC MAHON: Thank you, Your Honor.

10 (End of bench conference.)

11 THE COURT: Now, ladies and gentlemen, I know you've  
12 been a very smart and attentive jury, and I bet at least one of  
13 you has been wondering, There are 14 of us, but juries are only  
14 made up of 12 people. It turns out two of you have been  
15 selected to be alternates, and, Mr. Harrison, you're alternate  
16 No. 1; Ms. Yerks, you are alternate No. 2.

17 Where's Ms. Yerks?

18 (Juror Yerks raised hand.)

19 THE COURT: I want to first of all tell you folks we  
20 really appreciate the time you've spent listening to this case.  
21 Now, your job is not over yet. You will not be able to  
22 deliberate with the 12 people who remain in the jury. We have  
23 to have alternates because should any of you have had a family  
24 emergency or, you know, get sick, the flu is around, and would  
25 have been unable to come to the courthouse, we have to have 12

1 jurors in a criminal case. We would have had enough extra  
2 people here to make sure we could get this case finished, but  
3 at this point, I can't have more than 12 people in the jury  
4 room.

5 If, however, during the course of the deliberations a  
6 juror should get ill or for some reason before the jury is  
7 finished we lose somebody, then, Mr. Harrison, we would call  
8 you to come back in. And, Ms. Yerks, if we lost two jurors,  
9 then we'd have to call you back in.

10 Therefore, it's extremely important, and I know this  
11 is terribly unfair, but I have to keep you under the same  
12 caution: You must still continue to avoid any publicity about  
13 this case. It was discussed on the first page of *The*  
14 *Washington Post* this morning, so stay away from the paper or at  
15 least go to the sports section. Do not discuss this case.

16 The 12 of you can't e-mail or send any notes or have  
17 any communication with your two former colleagues.

18 If you will leave your phone numbers with Ms. Guyton,  
19 we will call you so that you know either that we need you back  
20 here or the case is over so that you can then read the paper,  
21 and other than anything you might remember about those three  
22 classified exhibits, there's nothing that prohibits you from  
23 talking about this case, although again, you may want to  
24 respect the thoughts of your fellow jurors and not.

25 But at this point, we're going to let Mr. Harrison

1 and Ms. Yerks go. Leave your notebooks here. We'll keep them  
2 so that should you have to come back and deliberate -- and as I  
3 said, do leave us a note with your phone number on it, okay?  
4 And I think we can let you folks go right now, all right?  
5 Thank you. We'll stay in session for another minute.

6 You should check out with the Clerk's Office,  
7 Ms. Yerks and Mr. Harrison. Let them know that you are  
8 alternates so that you're not going to be coming back unless we  
9 have to call you back, and just leave your phone numbers,  
10 unless we already have them.

11 Is there a problem?

12 (Discussion off the record between the Court and the  
13 Court Security Officer.)

14 THE COURT: All right. Well, you're going to get a  
15 break now anyway, so what we'll do is this: We're going to  
16 give you your afternoon break. What I would like you to do,  
17 once the two alternates have left, so you need to step outside  
18 while this is being done, the 12 of you decide who wants to be  
19 the foreperson, all right? And then if the foreperson could  
20 let me know in a written note how long a break you want to  
21 take, all right? During that time, Ms. Yerks can retrieve her  
22 cell phone from the car of one of the rest of you, all right?

23 And then you might want to decide how long you want  
24 to deliberate today. There's -- once a jury starts  
25 deliberating, the schedule can change dramatically. If you

1 want to stay past 5:30, that's fine. If you're going to stay  
2 much later than that, I need to know so I can keep some heat on  
3 in the room for you. If you want to stop at 5:30, which has  
4 been our normal time, that's also fine.

5           You should know also that if you have a question, I  
6 can't answer your question without running it by the attorneys,  
7 and so I require at least one lawyer per side to always stay in  
8 my courtroom. That does mean, however, that if you are going  
9 to be on a break, I can let those lawyers leave the courtroom  
10 for that time period.

11           So anytime you take a lunch break or a coffee break,  
12 I want you to let me know, you know: We're breaking at this  
13 time for 15 minutes, and that way I'll let everybody go so that  
14 we don't waste your time. If you have a question and I have to  
15 track lawyers down, you know, you might wait a half an hour for  
16 an answer, and we don't want to do that, all right?

17           You also might want to think about what time you want  
18 to start tomorrow morning. As I told you, I have other matters  
19 unrelated to this case in my courtroom. You'll be my first  
20 priority, but the point is you can start at 9:00, you can start  
21 at 8:30, frankly, whenever you want to start, but you can't  
22 start until you're all together.

23           Jury deliberation is a collaborative process, and it  
24 means that each of you must be listening to the other  
25 discussing the evidence, so if someone's in the restroom, you

1 should stop deliberating. If someone's run downstairs to get a  
2 coffee, you've got to stop deliberating because it's important  
3 that you hear each other, all right?

4 All right, we're going to let the jury go now, and if  
5 you'd let us know who's going to be the foreperson, how long a  
6 break you want, that will be just fine.

7 We'll recess court.

8 (Recess from 2:46 p.m., until 4:22 p.m.)

9 (Defendant present, Jury out.)

10 THE COURT: Well, I told you-all this was a smart  
11 jury. I just, I love the questions that we get. It shows that  
12 they're reading and thinking.

13 All right, the answer for the first question is easy.  
14 "The jury would like further clarification on 'venue' (page 56  
15 of the jury instructions). More directly, Count 10, how is  
16 venue determined?"

17 And there is a Fourth Circuit case that I think is  
18 right on point. It's *Rodriguez-Moreno* and *Bowens v. United*  
19 *States*, but they both seem to hold the proposition that venue  
20 is proper in the district where the effects of the offense  
21 would be felt, concluding that because the effects of the  
22 materially false statements were felt by those conducting a  
23 federal investigation in Maryland, venue was proper in that  
24 district.

25 So the effect for Count 10 would be felt by the grand

1 jury in the Eastern District of Virginia, and that's why that's  
2 a relatively easy answer.

3 MR. TRUMP: Yes, it's --

4 THE COURT: Because they're specifically concerned  
5 about Count 10.

6 MR. TRUMP: Yeah, it's in the statute, Judge. A  
7 prosecution under this section may be brought in the district  
8 in which the official proceeding was intended to be affected.

9 THE COURT: That's even easier. Hold on a second.

10 (Laughter.)

11 THE COURT: Always start with the statute. You're  
12 correct, Mr. Trump. All right, let me -- what's our code  
13 section for that?

14 MR. TRUMP: 1512(g) -- excuse me, (h)(i).

15 THE COURT: All right, 1512(g)?

16 MR. TRUMP: (H).

17 THE COURT: I'm sorry, (h).

18 MR. TRUMP: 1512(h)(i). Excuse me, it's just -- I'm  
19 misreading that. It's 1512(i).

20 THE COURT: Correct, you're right. So a prosecution  
21 under -- the prosecution under Count 10 may be brought in the  
22 district in which the official proceeding was intended to be  
23 affected, all right? Or in the district. So I'm going to read  
24 it that way, all right? That's from the statute.

25 And I think that's the only answer they are

1 requesting at this point.

2 MR. MAC MAHON: Well, Your Honor, if I may, I think  
3 that the question about clarification on venue, I know they're  
4 just asking about Count 10 here, and, and I think that the  
5 instruction that we proffered before about where the element of  
6 these other offenses where the information was disclosed or  
7 where somebody was when they heard it is the proper venue in  
8 the 793 counts, and I think that's what they're asking as well,  
9 and I think that's what they should be told.

10 THE COURT: Well, I'm not going to go beyond the  
11 specifics of the question, and because they did it  
12 specifically, I'm going to address that. If they have further  
13 questions, they are not going to be shy about coming back, all  
14 right?

15 MR. MAC MAHON: Your Honor, your answer is just,  
16 you're going to be very clear that it pertains only to Count  
17 10?

18 THE COURT: To Count 10, yes. All right?

19 MR. MAC MAHON: It doesn't affect venue for any other  
20 count.

21 THE COURT: Correct. I will say, though, in doing a  
22 quick check of my book on Fourth Circuit criminal law, the  
23 concept on venue does seem to be very statute specific, so I  
24 suggest since this issue may come up again, the government --  
25 both sides may want to do some specific research on these -- on

1 the other counts for venue issues.

2 Again, what I said years ago in the context of, you  
3 know, deciding on the Risen issue is not necessarily a complete  
4 or full instruction. That was never the intention of the Court  
5 back then. You've been citing me to me. I'm not reversing  
6 myself; I just want to -- there must be other judges who have  
7 also addressed the issue of venue for these statutes, maybe  
8 not.

9 MR. MAC MAHON: We'd like the cite Brinkema on venue,  
10 Your Honor.

11 THE COURT: Yeah, Brinkema on venue, right.

12 But anyway, let's get the jury in. They want to go  
13 home at 5:15 tonight. I will bring them in here before I send  
14 them home.

15 MR. OLSHAN: Your Honor?

16 THE COURT: Yeah.

17 MR. OLSHAN: There was a second question that just  
18 came out?

19 THE COURT: Yeah. They want to stick sticky notes on  
20 the wall, all right? We're telling them they can't do that.  
21 They have to use the board.

22 We're giving you every note that we get, and I  
23 don't -- if you didn't get those yet --

24 MR. OLSHAN: I think it literally just came out as  
25 the Court was coming out.



1 THE COURT: Yeah. Do you like our snazzy new forms?  
2 We're giving them some structure. Okay.

3 (Jury present.)

4 THE COURT: Again, folks, you can really sit anywhere  
5 in the box where you're comfortable. That's all right. You  
6 like your seats. Have a seat, please.

7 I was just telling the attorneys I knew you were a  
8 sharp jury, and that was a very smart question you sent. Let  
9 me address the easier question. You can have all the Post-it  
10 notes you want, but you can't put masking tape on my walls,  
11 okay?

12 A JUROR: I thought you might say that.

13 THE COURT: Okay. You can put masking tape on the  
14 tripod; you know, we've given you an easel; and the sticky  
15 notes, the Post-it notes won't hurt the walls. I don't care if  
16 you want to put those on the walls, all right? But, you know,  
17 it's government property. You don't want to be destroying it.  
18 All right.

19 Now, in terms of the substantive question, you've  
20 asked: "The jury would like further clarification on 'venue.'  
21 More directly, Count 10, how is venue determined?"

22 I understand that's your question. And for Count 10,  
23 which is again the obstruction charge, that's actually -- the  
24 venue provision is actually in the statute, and I probably  
25 should have given that to you. So a prosecution under this

1 section may be brought in the district in which the official  
2 proceeding (whether or not pending or about to be instituted)  
3 was intended to be affected or in the district in which the  
4 conduct constituting the alleged offense occurred.

5 And what I'll do is I'm going to photocopy just that  
6 section to give to the jury so they have it as an additional  
7 instruction along with the other ones.

8 Any objection to doing that?

9 MR. MAC MAHON: No objection.

10 MR. TRUMP: (Shaking head.)

11 THE COURT: All right. So this additional  
12 instruction, I'll put another -- I'll put it in the, give you a  
13 page number so it's sort of logical, and it will say for Count  
14 10, so you don't mix it up with anything else, but for Count  
15 10, there's actually a statutory provision, all right? And  
16 I'll get that to you, all right?

17 The other thing is, folks, I know you want to leave  
18 at 5:15 today, and that's fine, but our, our practice will be  
19 before any session is ended for the day, I always want to bring  
20 you back in just to make sure I remind you about, you know, how  
21 you have to behave from here on out, all right?

22 So we'll recess court to await your decision.

23 (Recess from 4:30 p.m., until 5:18 p.m.)

24 (Defendant and Jury present.)

25 THE COURT: Ah, the jury has indicated they want to

1 start at 8:30 tomorrow morning, bright and early, so I'll  
2 require at least one attorney for each side to be in the  
3 courtroom. That's great, ladies and gentlemen.

4 Now, it's pretty cold in the courtroom right now.  
5 Was the jury room comfortable when you were in there?

6 (Jurors nodding heads.)

7 THE COURT: All right. Don't be -- you won't be shy,  
8 I don't even have to say that, about sending us notes. The  
9 temperature is tough to keep under control, but we'll try to  
10 make it as comfortable for you as possible.

11 All right, so I'm going to send you home for the  
12 evening. Please remember my cautions: You must not try to  
13 communicate with each other or your two former colleagues.  
14 Don't discuss this case with anyone. Again, some of your  
15 family may know what case you're sitting on. If they want to  
16 talk to you about the article in *The Post* or anything else,  
17 you've got to tell them, "Judge said absolutely no." Do not do  
18 it.

19 And don't take any of the evidence home with you.  
20 You can't be studying it overnight. If you're reading the  
21 chapter, Exhibit 132, you need to read it here in the jury  
22 room.

23 So just -- you've been a great jury. Don't let  
24 anything mess up our case at this point. And we'll see you  
25 back here at 8:30. I'm not going to bring you back into court.

1 You can just report to the jury room, and once all 12 of you  
2 are there, you can start deliberating. Again, until you're all  
3 12 in the room, you can make pleasantries about the weather or  
4 the upcoming weekend, but do not discuss the case, all right?  
5 Thank you. We'll let you-all go.

6 I'll stay in session for a few minutes.

7 MR. MAC MAHON: Thank you, Your Honor.

8 (Jury out.)

9 THE COURT: Mr. MacMahon, you had an issue you wanted  
10 to raise?

11 MR. MAC MAHON: Yes, Your Honor. You invited us to  
12 go do some more research on the venue question.

13 THE COURT: Yeah.

14 MR. MAC MAHON: And --

15 THE COURT: Have you shared your results with the  
16 government, or are they hearing it for --

17 MR. MAC MAHON: It's hot off the press, Your Honor.

18 THE COURT: All right.

19 MR. MAC MAHON: And I'm happy to share it with them  
20 now as well, and I have a copy for you, but the *Truong*, I think  
21 it's the *Truong* case --

22 THE COURT: Oh, that's an old case out of the Vietnam  
23 War, yep.

24 MR. MAC MAHON: Well, this, this -- we have a copy  
25 for the Court as well.

1 THE COURT: All right, if you'd give it to Mr. Wood?  
2 Yeah.

3 They have an exhibit for me.

4 MR. MAC MAHON: Judge, it's footnote 11. The way  
5 this printed out is not -- but this is *U.S. v. Truong*,  
6 T-r-u-o-n-g.

7 THE COURT: I know the case. I was around in those  
8 days, yeah.

9 MR. MAC MAHON: I was just giving it for the court  
10 reporter, Your Honor. I was getting that look from the court  
11 reporter.

12 THE COURT: Oh, I'm sorry. Go ahead.

13 MR. MAC MAHON: And it's 629 F.2d 908.

14 But, Judge, in footnote 11 in the *Truong* case, there  
15 was -- and this was a search for venue questions in espionage,  
16 and this was a 793 conviction and a 794 case, but what the  
17 Fourth Circuit did in affirming in that case was language in a  
18 footnote which is found on page 18, footnote 11 -- and it came  
19 out double-sided; I'm sorry, Your Honor -- but the defendant in  
20 that case complained about venue in an espionage case, and  
21 there's the language about how it's constitutional and why it's  
22 important that venue be established since the defendant has the  
23 right to be charged in the district where the crime occurred,  
24 and it says in 11 that since Krall was the means by which the  
25 documents were carried to the Vietnamese in Paris, the

1 proscribed act, the act of transmission took place in  
2 Alexandria.

3           So in that case, albeit in a footnote, there is a  
4 Fourth Circuit opinion that says the proscribed act under 793  
5 is the act of transmission, which is what we've been arguing to  
6 the Court. It's not all the other peripheral instances that  
7 happened or may have happened in this case or even in the  
8 *Truong* case.

9           And the cite there is to *U.S. v. Walden*, which I  
10 think you cited to us a couple days before, and the *Walden*  
11 case, which we pulled up, also, deals with how it's -- it is  
12 element specific, the acts of venue, because of the  
13 constitutional right to be tried in the, in the district where  
14 the crime is committed. They cite --

15           THE COURT: But, you know, the other issue -- and  
16 again, I'm going to let the government research this overnight.  
17 It's early enough in the jury's deliberations if we have to  
18 refine the venue instruction, it's not going to be a problem,  
19 but there's also a pretty well-established principle that  
20 where, where a -- where the effects of a crime are felt can be  
21 part of the continuity of venue. I mean, again, the government  
22 has alleged that these disclosures, among the places where  
23 there was an unlawful disclosure are here in Virginia.

24           MR. MAC MAHON: All right, Judge. There's a couple  
25 counts that deal with that but not every count, and really, I

1 don't think that in -- if the government needs time to research  
2 it, it's fine, but what these, what these cases are saying is  
3 that it's the proscribed act in the case. It's not an  
4 ephemeral concept that we decide where, where a crime -- in  
5 very few cases is there an issue of venue. Normally in all of  
6 our plea agreements or cases we have, someone says, "I was in  
7 the Eastern District of Virginia." It's never an issue in  
8 almost any case that we've ever had -- that I've ever had in  
9 front of you. I've never had the issue come up.

10 THE COURT: But I've had the issue come up. I  
11 mentioned a couple examples to you yesterday.

12 MR. MAC MAHON: But I don't, I don't believe -- I  
13 think when you read *Walden* and you read this *Truong* case, that  
14 you have to find an act that was element specific. It says in  
15 this *Truong* footnote --

16 THE COURT: Wait. But why is not at least, for  
17 example, causing the disclosure or causing the communication --  
18 part of the problem is the communication occurs, part of the  
19 communication is in the Eastern District of Virginia. That is,  
20 when the book enters Virginia, there has been --

21 MR. MAC MAHON: And that's very few counts, Judge.

22 THE COURT: I'm sorry?

23 MR. MAC MAHON: Not every count deals with the  
24 publication of the book in Virginia.

25 THE COURT: No, I recognize that.

1 MR. MAC MAHON: There's attempts. There's conveyance  
2 of property. There's other counts that it's possible you  
3 could -- I mean, we would again renew the Rule 29 on this  
4 issue, and I don't expect the Court to grant it at this time,  
5 but there isn't any evidence of transmission of this  
6 information. The four phone calls add up to about a minute,  
7 and it has to be element-specific.

8 It can't just be the sale of the book. If it's just  
9 the sale of the book, then every count but that has to go out  
10 because there isn't any evidence of venue, and that was the  
11 instruction that we gave you before, which is they have -- the  
12 government has to prove where the act of transmission or  
13 receipt took place here in the Eastern District of Virginia,  
14 and there's no evidence of that whatsoever.

15 THE COURT: All right, what I'm going to do, I mean,  
16 the jury has this case now.

17 Mr. Trump, are you ready to respond?

18 MR. TRUMP: Your Honor, in the *Truong* case, it was a  
19 conspiracy case, and Truong and Humphrey were coconspirators.

20 THE COURT: I know.

21 MR. TRUMP: They were arguing the case that they  
22 should have been charged in D.C. because that's where the  
23 conspiracy was located, but they were prosecuted in Virginia  
24 because they transferred the documents to the unwitting person  
25 who then flew to Paris from Virginia.



1           So it was a question of in that case, that the  
2 defendant was claiming I should have been charged in D.C., and  
3 the court said no, there was an act of transmission occurring  
4 in Virginia. You could have been charged in D.C., but you  
5 weren't. You were charged in Virginia.

6           So it's not, it's not a definitive statement that the  
7 only place the case could have been charged was in Virginia.

8           THE COURT: And the even more general proposition of  
9 law was that there was an act in furtherance of the conspiracy  
10 that occurred in the Eastern District of Virginia in that case.

11           MR. TRUMP: Well, there was also conspiracy to  
12 violate 793, but even in the 793 context, it wasn't a  
13 definitive statement that the only place it could have been  
14 charged was, was Eastern District of Virginia, but there's also  
15 a fundamental point that the jury has been instructed and we  
16 argued the case based upon the proffered instruction.

17           I think at this point, if it's error, it's error, and  
18 we'll find out at some point if the defendant is convicted, but  
19 if we are to revise the instruction now, we can't go back and  
20 reargue the case.

21           THE COURT: Well, I don't think it was that major an  
22 argument in the case, but I'll let it be as it is. As I said,  
23 if we get questions, we'll have to address the specific  
24 questions that come up from the jury, and at this point, as I  
25 said, I'm not uncomfortable with the venue instruction, and

1 that's what it is.

2 So you've made the record, Mr. MacMahon, and I'm not  
3 changing --

4 MR. MAC MAHON: We'll do more research, Your Honor,  
5 if you want us to. We'll go back to the library.

6 THE COURT: I never discourage counsel from reading  
7 the law; that's wonderful; but in any case, I do think, though,  
8 out of fairness to the government and to the Court, you need to  
9 send it to us in writing so that we have a chance to look at it  
10 and not just have to, you know, think about it from the bench,  
11 okay?

12 MR. MAC MAHON: We'll draft something.

13 THE COURT: All right. So tomorrow morning, 8:30.  
14 We'll recess court until then.

15 (Recess from 5:28 p.m., until 8:30 a.m., January 23, 2015.)  
16

17 CERTIFICATE OF THE REPORTER

18 I certify that the foregoing is a correct transcript of  
19 the record of proceedings in the above-entitled matter.  
20  
21

22 /s/  
23 \_\_\_\_\_  
Anneliese J. Thomson  
24  
25